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The Solicitors' Journal

VOL. LXXIX. **Saturday, February 9, 1935.** No. 6

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Current Topics.

The New Silks.

THAT hope springs eternal not only in the lay, but likewise in the professional, breast, is again demonstrated by the fact that so many members of the junior Bar have decided to move forward into the front row as Silks. The decision to give up "paper work," which this step involves, is one of great moment in the case of most members of the Bar; indeed, the late Mr. Justice BRAY went so far as to say that no one should apply for Silk—at all events if he intended to practise—until he has enjoyed for three years a professional income of £3,000. Whether this figure is now to be taken as standardised may be doubtful, but about this there can be no dubiety that the resolution to apply for a silk gown is one to be well pondered before being acted upon. Each of the sixteen new aspirants for forensic fame in his new role has enjoyed a fair—in some instances, a large—junior practice, and each, therefore, is justified in entertaining a well-grounded hope of receiving a fair share of the work that falls to a leader. The senior in the list, Mr. P. E. SANDLANDS, has long had a large practice on the Midland Circuit as well as in town; the junior is Mr. C. J. RADCLIFFE, called in 1924, who has appeared in a number of important cases; while the intervening names are representative of the varied classes of work in the various courts—the Chancery Division, the Admiralty Division, the Commercial Court, and the King's Bench Division. One, Mr. RALPH SUTTON, is most widely known as a lecturer on law and as the writer and editor of several treatises of great professional value.

Variation of "B" Licences under Road and Rail Traffic Act 1933.

AN important point was decided recently by the Appeal Tribunal (Mr. ROWAND HARKER, K.C., chairman, Mr. E. S. SHRAPNELL SMITH and Mr. F. R. DAVENPORT) under the Road and Rail Traffic Act, 1933, when a road haulier and dealer in granite sets appealed against the decision of the Licensing Authority for the Metropolitan Area who refused an application to vary a "B" licence to the extent of substituting for a 4-ton trailer a motor vehicle of 2½ tons. The existing licence covered also a vehicle of 7¼ tons. The chairman intimated that the Tribunal was of opinion that a trailer as defined in s. 36 of the Act was not a "specified vehicle" within the meaning of s. 10. It followed that sub-s. (2) of the last-named section did not apply, and the Licensing Authority had a discretion as to whether or not he should grant the variation. The case was then considered in the light of the relevant facts and the appeal dismissed. Another case under the same Act, *Rex* v. *Licensing Authority for West Midland Traffic Area: Ex parte Great Western Rly. Co.* (78 SOL. J. 80), was before the Court of Appeal, wherein GREER, L.J., pointed out that the members of the firm in applying for a "B" licence stated—as they were bound to state—the district in which, or the places between which, their vehicles would normally be used. They did not state, and they were under no obligation to state, the district or area in which they proposed to use the vehicles for which they were asking the licence. It was held that "W., B. and district" constituted the proper notice under the Act and did not mean the district to which the licence was to be confined. "Although," GREER, L.J., said, "it may be a hardship on those who carry on business in this country that they should be obliged to know and understand the provisions of Acts of Parliament, the court must assume for the present purpose that people are familiar with the terms of the Road and Rail Traffic Act, 1933, and that they know that, when an application for a 'B' licence is made, it is not and can never be an application for a licence to run in any particular district." This is an important point for those concerned to maintain the interests of traffic concerns, railways and the like.

Claim for "Dispensation."

A SOMEWHAT unusual and interesting case of motor law under the Road and Rail Traffic Act, 1933, came before the Appeal Tribunal (consisting of Mr. ROWAND HARKER, K.C., chairman, Mr. E. S. SHRAPNELL SMITH and Mr. F. C. FAIRHOLME) on the 18th January. Section 16, sub-s. (3), of the Act aforesaid provides that, subject to the provisions of the regulations made under the section, "a licensing authority may dispense with the observance, as respects the carriage of goods under a licence granted by him, of any requirement of those regulations, and may grant such a dispensation either generally, or as respects any particular vehicle, or as respects the use of vehicles for any particular purpose, but he shall not grant such a dispensation unless he is satisfied that it is not reasonably practicable, having regard to the nature of the business concerned, for the requirement dispensed with to be observed." There follows a proviso which need not, for our purposes, be quoted. In the case referred to the appellants, E. K. Cole, Ltd., held C licences for nineteen motor-vehicles to take wireless sets and spare

parts therefor to various parts of the country. There were no drivers in the ordinary sense, but technical engineers who drove the vehicles and did the necessary work on the sets. The company applied for a dispensation from the necessity to keep and preserve the various records required by sub-ss. (1) and (4) of the same section on the ground that they were unnecessarily burdensome in the case of vehicles not used for profit or reward. The licensing authority refused to grant the dispensation on the ground that the appellants had not shown that it was not reasonably practicable. The Appeal Tribunal upheld a preliminary objection to the effect that they had no jurisdiction to deal with the matter. The chairman intimated that the decision must depend on the view taken as to whether an application for dispensation was an application for varying a licence. In the Tribunal's view dispensation was not such a variation within the meaning of the Act, and there was, consequently, no jurisdiction to entertain the application. A report of the proceedings will be found in *The Times* of 19th January.

Supreme Court of Judicature (Amendment) Bill.

In moving on 1st February the second reading in the House of Commons of the Supreme Court of Judicature (Amendment) Bill, the Solicitor-General alluded to the present congestion in the King's Bench Division, mentioning the large amount of judicial time taken up in dealing with accidents caused by motor cars. Referring to cl. 2, which empowers the Lord Chancellor to nominate a vice-president of the second division of the Court of Appeal, Sir Donald suggested it was not necessary to emphasise the great importance of the position of the presiding judge in a court of appeal, and it was thought right that that position should not be left to the accident of seniority. Clause 3 enabled proceedings relating to an alteration of a marriage settlement to be started and the necessary facts and issues to be gone into after the decree *nisi*: the order, of course, not becoming effective until after the decree had been made absolute. At present such petitions cannot be made until after the decree absolute has been pronounced. It is to be hoped that the concluding stages of the Bill will be carried through with the least possible delay.

Pedestrian Crossings.

The care which motorists should exercise at the beacon crossing places was recently emphasised by Mr. Ivan Snell at the Marylebone Police Court. Motorists, he said, were supposed to know that there were a great number of these crossings all over the place, and they were supposed to drive their cars in such a way that wherever there were beacons they were able to pull up if a pedestrian happened to be crossing. If these remarks are borne in mind it is probable that the noticeable slowing of traffic when the beacons were first brought into operation will once again be the order of the day. Familiarity appears to have bred contempt, and the object which once led to caution appears to have ceased to have much, if any, effect upon a certain type of driver. If this practice is to continue, the pedestrians' crossings will become veritable death-traps, and few will have the hardihood to begin to cross in the presence of traffic. In the case before the magistrate the pedestrians had been on the crossing for some time, and the magistrate said, "according to the regulation they had the right of way, and they had every expectation that any vehicle was bound to stop." To meet the dangers indicated above the Minister of Health has decided to make a grant from the Road Fund towards the cost of pedestrian-operated signals of a new type. Pedestrian-operated colour lights are not a new idea, but the signals to be installed will show the words "Cross Now," and "Don't Cross" at appropriate times. Some of these machines will be brought into operation automatically. The Pedestrians' Association has suggested that controlled and uncontrolled crossings should be readily distinguishable. Illuminated refuges casting a beam of light to show up the studded track are also advocated even as an alternative to the beacons. A correspondent to *The Times* suggests two 8-inch orange reflecting circles fixed to the beacon standards as enabling a driver readily to detect a pedestrian crossing where existing lighting, or the absence of it, renders, as it often does, the beacons difficult to detect with consequent distraction of the driver's mind from the road.

Safety on the Roads.

In a reply to a memorandum submitted by the Pedestrians' Association concerning the alleged inadequacy of the penalties inflicted by some magistrates in cases of serious motoring offences, the Home Secretary, after consultation with the Lord Chancellor and the Minister of Transport, assents to the view that the penalties available should provide an adequate remedy. The reply refers to the circular letters sent last year from the Home Office to justices, and continues: "Particular emphasis has been laid upon the effectiveness of an order disqualifying a driver from holding a driving licence for a period, and the Secretary of State has reason to believe that during the last few months there has been an increase in the number of disqualifications imposed by the courts." The reply also intimates that it is too early as yet to form any opinion with regard to the use being made of the extended powers conferred on the courts by the Road Traffic Act, 1934. Reference may also be made to the series of specifications with regard to asphalt road construction recently issued by the British Standards Institution as a result of research with which the Ministry of Transport has been in touch. Apart from a much to be-desired unification of materials and methods, the new road surface will, it is claimed, be non-skid in character. With regard to the erection of 30 miles an hour speed limit signs, a recent letter of the Minister of Transport to the County Councils' Association says: "It does not appear to the Minister that the statute requires that speed limit signs should be erected at each end of every individual road in a built-up area." Sub-section 7 (*a*) of s. 1 of the Road Traffic Act, 1934, requires a local authority, "to erect and maintain the prescribed traffic signs in such positions as may be requisite in order to give effect to general or other directions given by the Minister for the purpose of securing that adequate guidance is given to drivers . . ." in the appropriate circumstances. The Minister intimates that it will not be necessary to erect a sign merely because the road crosses a boundary between two local authorities.

Depositions Again.

The controversy with regard to the taking of depositions in preliminary hearings of indictable cases before magistrates reached a further stage on 5th February, when the learned stipendiary at Marylebone Police Court made a further statement with regard to the new procedure which he had adopted. He explained that the only change which he proposed in the old procedure was that the prosecution, before the case opened, should supply the clerk of the court with a copy of proof, or statement of the evidence to be given by witnesses. Instead of writing down the evidence in longhand as the case proceeded, the clerk would follow this proof or statement. If any questions put to the witnesses or answers given by them should be at variance with the proof, the clerk would insert the correct answer and erase the incorrect answer. Eventually, after cross-examination, the evidence would be read over to and signed by the witnesses as at present. The learned magistrate examined s. 17 of the Indictable Offences Act, 1848, and pointed out that in practice the deposition is never taken down in writing by the justice, and is never signed by the justice in the presence of the accused before committing him for trial. Where after several

hearings and after sworn depositions had been taken, an additional defendant was brought into the case, all witnesses are recalled and their evidence read over in the presence of the new defendant. Such a procedure, it was stated, would effect a saving of nearly three hours in every four, and would also effect a saving of expense to the accused as well as to public funds. Moreover, an innocent man would obtain release more quickly than at present, while if accused persons were handed copies of the proofs, they would be able to mark their copies with points for cross-examination, which they might easily forget if the evidence should last from one week to another. The learned magistrate stated that he would welcome a ruling on the point by a higher authority. Reference has already been made to this subject in previous "Current Topics" (see *ante*, pp. 54, 75), and further developments will be awaited with interest.

Housing Standards and Statistics.

THE second report of the Council for Research on Housing Construction, of which Lord DUDLEY is chairman, is, in relation to its predecessor, of a supplementary character, being the work of a single technical panel of the Council under the chairmanship of Dr. W. H. COATES, and dealing particularly with housing standards and statistics. The report complains of the serious lack of statistical information on housing conditions or of any clearly defined and nationally accepted minimum standards for housing. While fundamentally unsuitable for use as a housing survey, the population census is regarded as a very valuable record of the nation's housing as related to its other statistical characteristics, and a quinquennial, as opposed to a decennial, taking of the census is advocated. The present statutory records of housing conditions and activities kept by local authorities are thought to be incomplete, inaccessible, out of date in form, and ineffective as lacking the basis of nationally accepted standards; a fresh survey system is suggested as cheaper and more expeditious than attempting a compilation from existing records. Housing standards, it is intimated, should distinguish between the "satisfactory" and the "unsatisfactory" in housing conditions, and should reflect a collective judgment in light of all the relevant factors. Overcrowding should be measured by a new standard of occupation, determined by suitable tables, taking into account the number of "units of accommodation" in each house and the "equivalent adults" therein. This standard would be used as a basis for action against individual cases of overcrowding, and for the estimation of the shortage of housing accommodation in each administrative area. The importance of conducting the housing survey on a uniform plan under the general direction of the Minister of Health is stressed, although the survey in each district is, of course, regarded as being operated by the local authority. New and comprehensive returns submitted periodically to the Minister of Health are advocated, together with a general codification and revision of laws and bye-laws according to modern housing standards and administrative methods. It has only been possible to give a cursory indication of the various recommendations which are made. For further information, the report, which was recently published by P. S. King and Sons, at 7s. 6d., should be consulted.

Film Censorship.

IN a recent prosecution before the Leeds Stipendiary Magistrate a question arose which is significant of the many dangers inherent in the present system of film censorship. The licensee of a cinema theatre and a cinema attendant were charged with exhibiting a film not for commercial exhibition to a child under sixteen, and it was explained that when films were granted an A certificate by the British Board of Film Censors they could only be shown to children when accompanied by a parent or *bona fide* adult guardian. Evidence was given by a sixteen-year old girl that she took a twelve-year old boy to see an A certificate film. The magistrate held that the intention was that the child should be accompanied by a person who could exercise the same care and consideration as a parent, and he therefore did not think that the girl came within the description of *bonâ fide* adult guardian. The licensee was fined 40s. in each case and the cinema attendant 20s. in each case. The British Board of Film Censors is a purely voluntary body constituted by the film trade, but it has acquired a semi-official status by reason of the fact that county councils frequently annex to licences a condition similar to that approved in *Mills* v. *London County Council* [1925] 1 K.B. 213, that "no film is to be shown that has not been certified for public exhibition by the British Board of Film Censors without the express consent of the council." It is well known that the condition with regard to the admission of children is frequently evaded by children importuning visitors to cinemas to allow themselves to be "accompanied." In the course of the evidence in the Leeds case it was stated that there was a general impression in the film trade that any person over sixteen could act as a guardian, and it would appear therefore that the film trade is not itself entirely blameless in the matter. The whole question is bound up with that of general film censorship and cleaning up, and in that connection the "Croydon experiment," under which a local selection committee censors films for Sunday showing, should be watched with great interest by the film industry, for, as the Bishop of Croydon stated in a letter to *The Times* of 17th January, "if the 20,000,000 who are said to go to the cinemas in England every week cannot protect themselves from films which a large majority of them . . . does not want to see, why should not such a protection be afforded to those people by the community?"

Recent Decisions.

AMONG recent cases should be mentioned that of *Harman* v. *Layton-Bennett* (reported at p. 108 of this issue), where the Court of Appeal dismissed an appeal, per BENNETT, J., who held that he had no jurisdiction to try the matter. The facts are set out in our report of the case last 17th November (78 SOL. J., 820), and need not be repeated here, but it may be noted that the Court of Appeal, in February, 1933, in an application to vary a scheme, restored the order by which the plaintiff was adjudicated bankrupt and refused leave to appeal to the House of Lords. The plaintiff then brought a further application before BENNETT, J., with the result indicated.

In *Marshall and Others* v. *Cumberland County Council* (*The Times*, 2nd February), a case mentioned in our last issue, EVE, J., allowed the matter to stand over for fourteen days with liberty to apply, counsel for the Council expressing the hope that the parties would come to a reasonable arrangement. Meanwhile, the injunction against the defendants is continued.

The decision of BENNETT, J., who held, in *Forster and Another* v. *Williams Deacons Bank* (78 SOL. J., 754), that the bank could act in the dual capacity of custodian and ordinary trustee in relation to the same property (see our "Current Topic" in the issue of 3rd November), has been reversed by the Court of Appeal (*The Times*, 7th February). The court gave leave to appeal on the condition that the bank would pay the plaintiffs' costs of the appeal to the House of Lords in any event.

¶ Practitioners' attention should be drawn to the important decision of the Railway and Canal Commission (MACKINNON, J., Sir FRANCIS TAYLOR, K.C., and Sir FRANCIS DUNNELL) in *Re The Railways (Valuation for Rating) Act, 1930; Re Appeal by the Southern Railway Co. and others from a Decision of the Railway Assessment Authority*, where judgment was given in favour of the railway company. The matter is too elaborate a one for treatment here, but a verbatim report of the judgment will be given in *Rating and Income Tax* for the 16th and 23rd February.

The Examination of Witnesses in the U.S.S.R. under Letters of Request.

[CONTRIBUTED.]

THERE have been several cases in which the High Court of Justice in England has ordered that letters of request should issue to an appropriate court in Russia for the examination of witnesses there. But, except in the case mentioned below, the matters to be deposed to by such witnesses were either comparatively unimportant or not seriously contested, and accordingly the evidence was taken on written questions. There has, it is believed, been only one case up to the present in which the examination of the witnesses has taken place orally in the presence of English counsel and solicitors who attended for the purpose. As, however, it is understood that the question of the examination of witnesses in Russia is likely to arise fairly often, it may be of interest to record what takes place at a hearing where the witnesses are orally examined and cross-examined.

Russian law and practice pay comparatively little attention to precedent. It is, therefore, by no means impossible that at a future examination of witnesses the procedure and general course of events might be very different from those in the case which has already been heard. At the same time, the case in question received particularly careful consideration from the highest judicial authorities in Russia; it therefore seems likely that the procedure in that case was intended by those responsible for it to be followed in the future.

At the outset it may be stated that the hearing was conducted with great fairness and courtesy on the part of the court to all concerned. Moreover, greater freedom was allowed in the asking of questions than is usual where there is an examination before a foreign court, as opposed to an examination before a special examiner. On the other hand, a request (which had been forwarded to the court with the letters of request) that English counsel should be allowed to conduct the cross-examination through an interpreter, had been refused. Although, according to the relevant Russian code, the court has a discretion to hear any person, apart from Russian lawyers and the parties themselves, it was decided that this discretion should not be exercised in the present instance. (It is not known whether this discretion is one which is frequently used, or whether it is only in rare circumstances that the court gives effect to it.)

In these circumstances the parties were represented by Russian lawyers. At any rate one of the parties had not sufficient knowledge of the Russian Bar to apply to be represented by any particular lawyer; a lawyer was chosen and allotted to that party by the Collective of lawyers practising in the town where the hearing took place. It is believed that if the English representatives of the party in question had been dissatisfied with the lawyer allotted to that party, they could not have raised an objection to him and have had another lawyer appointed in his place. As it was, however, no occasion arose for this to be put to the test: the allotted lawyer proved to be an extremely intelligent and efficient one, and he apparently acted throughout entirely in the interests of his client.

One difficulty in the case was that none of the available lawyers spoke any language except Russian (although there is at least one Russian lawyer practising in Moscow who speaks some English). Another point is that Russian lawyers (as, indeed, most lawyers outside Anglo-Saxon countries) are not familiar with cross-examination as it is practised in England. It is only on the principal issues that cross-examination is normally permitted in Russia. Cross-examination as to credit is unknown. Moreover, a cross-examining advocate is not allowed to press a witness, or indeed, to ask a question in a form which could not leave the witness in any doubt whatever as to the answer expected from him: as will appear below, many questions are permitted which would in England be regarded as leading questions, but no greater licence is allowed in cross-examination than in examination-in-chief.

The hearing took place in the presence of three judges. Of these, only the President had any legal training. Of the other two judges, one appeared to be an ordinary labourer; the normal occupation of the third judge could not be guessed. (The non-legal judges hold office for a year at a time, but may be appointed for a further period if they are satisfactory.)

The court-room was a large square room. The judges' table was along one side, with its back to the window. At the same table there sat the registrar of the court, who was a young woman. At each end of the judges' table there was a smaller table at right angles to it; these two tables were the tables allotted to the legal representatives of the respective parties and their respective interpreters, but at one of them there also sat the shorthand writer to the court. The rest of the room was devoted to benches for the public. Neither the judges' table nor any other part of the room was raised in any way. There was one picture in the room—a full-sized portrait of Lenin, wearing a lounge suit and cloth cap, and standing with his hands in his pockets; its wide frame was covered with red cloth. Only the witness who was actually being examined at the moment was allowed to be present in the court-room; the other witnesses were segregated elsewhere.

The hearing on the first day was timed to commence at noon; actually the court sat at 12.45 p.m. On the second day the hearing was fixed at 10.30 a.m., but the court did not sit until 11.30 a.m. This was due to the fact that it had not been convenient for the witness whose cross-examination remained to be completed, to be present at the time fixed; but so far as is known, no intimation was given to the legal representatives of either of the parties of the change of time, although the judges must have been informed that the witness would be late.

The hearing began with a statement by the presiding judge to the effect that the court was sitting in order to take the evidence of witnesses in accordance with a request of the High Court of Justice in England. The names of the legal representatives (both Russian and English) of the parties were read out by the registrar.

The first witness was then asked to step forward. She was given a chair facing the presiding judge, and he warned her—at considerable length and with marked emphasis—that she must tell the truth throughout. There was no form of affirmation, still less of oath. Indeed, an oath would be wholly contrary to the law and spirit of Soviet Russia, and a witness could not be asked in cross-examination whether he would be prepared to swear to the truth of a statement made by him.

After the preliminary caution to the witness, the presiding judge commenced the examination. Written questions for examination-in-chief had been sent out with the letters of request, and these were put by the judge to the witness. He did not, however, follow them verbally. Where they were complicated, he split them into parts and asked them piecemeal, and so far as possible, he saw to it that not merely the words, but the substance, of the questions were answered by the witness.

The examination-in-chief was followed by the cross-examination, which was conducted by the Russian lawyer for the cross-examining party by means of direct questions to the witness. Questions do not have to be put through the presiding judge, as has to be done in some countries. The cross-examining lawyer remains seated; indeed, the only time when any person has to stand is when one or other of the lawyers addresses the court directly.

The cross-examination followed the lines which might have been expected, having regard to the fact that witnesses could not be pressed. The court objected to very few questions—

which may have been because the cross-examining lawyer was careful to confine himself to questions permissible under Russian procedure.

After some hours the cross-examining lawyer asked for an adjournment of half-an-hour, which was granted as a matter of course. It is the right of a lawyer during the examination of witnesses to ask for a short adjournment at any time. This is very convenient, especially in a case of this nature, since it enables the lawyer to consult with his clients (or, in this case, with the English lawyers present), and to receive their views as to the progress of the cross-examination, and as to any other questions that may have to be asked. There were two or three such adjournments in the course of the hearing of the evidence of the principal witness.

Cross-examination was followed by re-examination, made by the Russian lawyer on the other side. In the course of the re-examination of one of the witnesses, certain questions were asked which would, in England, be considered as blatantly leading questions. The English counsel who was present for the opposing party objected to these questions, his Russian representative having refused to make any objection on the ground that the presiding judge has so complete a discretion as to the allowance or disallowance of questions, that the legal representatives of the parties are not entitled even to mention the matter to him. The presiding judge very courteously heard the English counsel (who spoke through an interpreter), and allowed notes of all the objections to be entered on the protocol of the trial. At the same time he stated that, although according to Russian procedure, a question is not permissible if it suggests to the witness the answer which counsel expects, none of the questions objected to were improper according to Russian procedure. One of the questions which he declared to be unobjectionable was as follows: No previous mention of one A having been made during the hearing, a witness was asked whether she knew A. When she replied that she did not know him personally, but had often heard of him, she was asked: "Did B ever tell you that A lent a very large sum of money to B?"

Theoretically, the rules in Russia as to further cross-examination after re-examination, are the same as in England. In practice very much greater licence is allowed. It was taken as a matter of course that the counsel who had cross-examined should cross-examine again after the re-examination of a witness had concluded, and some of his questions appeared to go considerably further than would have been allowed in similar circumstances in England.

The hearing lasted until 9 p.m., and would have gone on longer if the examination of all the witnesses had not been completed by then, save in connection with the production and consideration of certain documents which could not be brought into court until the next day. It would, apparently, not have been at all unusual if the court had sat until midnight or later, although there had not been any adjournments for refreshments; the only adjournments had been for the purpose of consultations, and there was no possibility of obtaining food during them. Indeed, only one of these adjournments was as long as half-an-hour, the others lasting about twenty minutes.

The hearing concluded with a question by the presiding judge to the Russian lawyers on each side as to whether they had any objection to raise to anything that had happened during the hearing. This is understood to be the usual formula at the conclusion of a trial in Russia.

Finally, the president declared that all the requests of the English court had been complied with, and the court rose.

Mr. J. H. Warren, D.P.A. (Lond.), Assistant Solicitor of Birkenhead, has been appointed Clerk of Newton-in-Makerfield Urban District. Mr. Warren was admitted a solicitor in 1933.

Nuisance from Trees.

What legal remedies has an occupier of land if trees growing on an adjoining piece of land are permitted to spread their branches over the boundary line? The answer to this question depends entirely upon whether or not there is any relationship of landlord and tenant between the parties. It will be convenient to discuss this matter, therefore, under two quite distinct heads: (1) Independent Occupiers; (2) Landlord and Tenant Occupiers.

(1) *Independent Occupiers.*

Every occupier of land is under a legal duty to keep his trees strictly within his own boundaries, and if he fails to discharge this duty he is guilty of nuisance. In such cases, the mere fact that the branches overhang gives the occupier of the adjoining land a right to cut them off without notice to his neighbour (*Earl of Lonsdale* v. *Nelson* (1823), 2 B. & C., at p. 311), and *semble*, the same applies to roots which have spread themselves into his soil. He is not, however, entitled to pick fruit growing on the overhanging branches or to retain the branches when severed, because, as Avory, J., said in *Mills* v. *Brooker* ([1919] 1 K.B. 555, at p. 557), "(the) right to lop rests upon the fact that the overhanging branches constitute a nuisance which he is entitled to abate. He is given the right for the purpose of abatement and that alone." On the other hand, it is no defence in such a case to plead that the trees have been overhanging in the manner complained of for upwards of twenty years (*Lemmon* v. *Webb* [1895] A.C. 1).

If real injury is sustained by reason of the projecting condition of the branches, over and above the mere inconvenience thereby involved, an action for damages for nuisance will lie at the instance of the person so injured. It was not until 1904 that such an action was held to lie. In that year, in *Smith* v. *Giddy* (reported in [1904] 2 K.B. 448), the plaintiff alleged that he had sustained injury to the extent of £60 by reason of certain elm and ash trees growing on the defendant's land overhanging the plaintiff's land and interfering with the growth of his fruit trees, and claimed damages and an injunction. The county court judge held that the plaintiff's only remedy was to abate the nuisance by cutting back the overhanging branches himself, and he accordingly directed a non-suit. On appeal, the Divisional Court (Wills and Kennedy, JJ.) held that the action lay, though Wills, J., said (at p. 450): "I have come to this conclusion with considerable reluctance, for I have a strong feeling that it is highly desirable not to establish new causes of action if it can possibly be avoided . . ." Kennedy, J., on the other hand, said (at p. 451): ". . . where (overhanging trees) are actually doing damage, I think there must be a right of action. In such a case I do not think that the owner of the offending trees can compel the plaintiff to seek his remedy in cutting them. He has no right to put the plaintiff to the trouble and expense which that remedy might involve."

By a parity of reasoning, where roots spread themselves and cause damage, the occupier of the land thereby injured is not restricted merely to severing them, but has a valid claim for damages, as in *Middleton* v. *Humphries* (1913), 47 I.L.T. 160, where the plaintiff's wall had become undermined.

Mills v. *Brooker, supra*, was decided on the principle laid down by Kelly, C.B., in the earlier case of *Crowhurst* v. *The Amersham Burial Board* (1878), 4 Ex. D. 5. There the defendants, a burial board, had planted on their own land and about four feet from the boundary railings a yew tree, which grew through the railings and projected over the plaintiff's meadow which adjoined. The plaintiff's horse, feeding in the meadow, ate of the projecting portion of the yew tree and died of the poison contained therein. Affirming the judgment of the county court judge in favour of the plaintiff for the value of the horse, the learned Chief Baron said that the occupier of land ought on grounds of general convenience "to be allowed to turn out his cattle, acting upon the assumption that none

but innocuous trees are permitted to project over his land." This case may profitably be compared with *Ponting* v. *Noakes* [1894] 2 Q.B. 281, where the defendant's yew trees were growing within his boundaries but the plaintiff's cattle had reached over and eaten the leaves, the court holding that in such cases the defendant was not liable unless he was under a legal duty to maintain an adequate fence between the two properties and had failed to discharge that duty.

But, on the principle of *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330, even where a poisonous tree does not actually overhang adjoining land, the owner is liable if by the negligence of himself or his servants clippings from such a tree are allowed to fall on to the adjoining land and damage results. Thus, in the unreported case of *Woolliams* v. *Cholmondeley*, recently heard before His Honour Judge Kennedy, K.C., at Stow-on-the-Wold County Court, the plaintiff claimed £20 as damages for negligence and alleged that in the latter part of 1933 the defendant's servant had cut a yew hedge and had allowed the clippings to fall on to the plaintiff's land ; there they remained until Easter of 1934, when they were consumed by the plaintiff's sheep, which shortly afterwards died. For the defence it was argued that the yew hedge had been there for many years and that the plaintiff knew of its existence when he first "came to" the land. Overruling this defence, the learned judge gave judgment in the plaintiff's favour for the amount claimed with costs. The position would, however, have been otherwise if the clippings had fallen on to the land through no instrumentality on the part of the defendant or his agents : see *Wilson* v. *Newberg* (1871), L.R. 7 Q.B. 31.

(2) *Landlord and Tenant Occupiers.*

Where the occupier of one piece of land is the tenant of the occupier of the adjoining piece of land, the fact that on the landlord's premises there are trees which project over the boundary does not entitle the tenant either to abate the nuisance by cutting back the branches or to sue his landlord for any damage thereby caused. The fundamental principle in such cases is, to use the words of Sir G. Mellish, L.J., in *Erskine* v. *Adeane* (1873), L.R. 8 Ch. App. Cas. 756, at p. 761, "that a tenant, when he takes a farm, must look and judge for himself what the state of the farm is. Just as in the case of a purchaser of a business the rule is *caveat emptor*, so in the case of taking the lease of property the rule is *caveat lessee ;* he must take the property as he finds it."

The application of this principle is illustrated by the case of *Cheater* v. *Cater* [1918] 1 K.B. 247. There a landlord let a farm, retaining in his own possession certain adjoining land on which was a shrubbery containing yew trees so near the farm that the branches thereof overhung the boundary. The tenant's mare ate of the leaves and died. The trees overhung the land substantially to the same extent both at the commencement of the tenancy and at the date when the mare ate of the leaves. The tenant's claim for the value of the mare was dismissed by the county court judge, and the appeal to the Divisional Court was also unsuccessful : [1917] 2 K.B. 516, the court (Lord Coleridge and Rowlatt, JJ.) being equally divided. The Court of Appeal (Pickford, L.J., Bankes, L.J., and Sargant, J.) were, however, unanimous in dismissing the further appeal.

But what of the case where the trees are in a proper condition when the tenant takes the land, but are later permitted by the landlord to grow and spread their branches over the tenant's land ? Can it be said that the tenant "takes the land" with this possibility in mind also, and that he is therefore disentitled to sue for damages ? No definite answer can be given to this question in the present state of the authorities, but it is interesting to note that the conflict of opinion between Lord Coleridge and Rowlatt, JJ., in *Cheater* v. *Cater*, *supra*, clearly arose from their interpreting in different ways the facts found in the county court. Lord Coleridge, J., said (at p. 518) : "At the time of the demise the tree, although it overhung the demised property, was harmless. It could not be reached by cattle or horses, but during the tenancy it grew and came within reach of the horses . . . I do not think Mellish, L.J."—in *Erskine* v. *Adeane*, *supra*—"meant to say that the tenant when he took the lease was bound to guard himself against dangers other than those existing at the date of the lease ; he was not bound to assume that the landlord would omit to do what was proper for him to do, that he would neglect to cut the yew tree and would suffer it to become a danger. With all respect to the Lord Justice's *dictum*, I am not prepared to extend it." Rowlatt, J., on the other hand, took the view that there had been no substantial alteration in the tree since the demise, and added, "If the landlord, having let the field to the tenant, had afterwards planted a poisonous tree in his own land so near to the demised field that it grew over the boundary, he might have been liable. I am not clear how the case would stand if the landlord had on his own land a yew tree which at the time of the demise did not overhang the boundary, but afterwards during the tenancy grew over the boundary."

In the Court of Appeal, Pickford and Bankes, L.JJ., expressly refrained from dealing with this question, but Sargant, J., though cautious, said (at p. 256), "If trees on the adjoining property of the landlord *subsequently* grow so as to become dangerous to the tenant's cattle on his own land, it may be that the rights and obligations arising therefrom would be regulated by those between adjoining landowners rather than by those between landlord and tenant." This is, obviously, the fair view to take of this matter and the one which would probably be adopted by the courts.

"Conduct of Meeting" under Companies Act, 1929.

AUTHORITY TO HOLD A MEETING WITH LESS THAN PRESCRIBED QUORUM.

THERE has now been published (1934), S.L.T. 513, *Edinburgh Workmen's Houses Improvement Co.*, Petitioners), the recent decision of the Court of Session in the first reported application made under sub-s. (2) of s. 115 of the Companies Act, 1929. This sub-section, of course, introduced a new element into company procedure as there is nothing analogous in the corresponding section of the 1908 Act (s. 67).

As a result of the petition the court ordered a meeting of the company, at which special resolutions might be proposed and passed, to be held with a quorum of five instead of thirteen as provided in the articles. The judgment is thus of great interest to company secretaries and others actively engaged in the administration of the affairs of public companies as it deals with a distinctly practical matter.

The company was formed under the Joint Stock Companies Acts, 1856 and 1857, and its purpose was the provision of dwellings for the working classes, a type of undertaking well known in Scotland ; 1,687 shares of £10 each had been issued and were fully paid. The number of shareholders was fifty-four and the necessary quorum, calculated in accordance with the articles, was thirteen personally present. These articles at the time of the petition were still those of Table B of the 1857 Act.

The company had purchased a block of 111 shares from the shareholders in whose hands they were at the time of acquisition at various dates between 1875 and 1886, that is, antecedent to the judgment of the House of Lords in *Trevor* v. *Whitworth*, (1887), 12 A.C. 409, which established the incompetence and illegality of the purchase by a company of its own shares. Although the matter was an old one, the company desired to regularise the position by having the shares cancelled. As, however, the articles contained no power to reduce, it was necessary to hold two extraordinary meetings, one to add

power to reduce in the articles and another to effect the reduction.

The difficulty of carrying the proposal into effect arose through the impracticability of satisfying the provision as to a quorum. Twenty-one shareholders had appointed proxies for the meetings, but only two were actually present. It was conceded that this did not satisfy the requirements of the articles, and that accordingly the resolutions were not valid (*Romford Canal Co.* (1883), 24 Ch. D. 85). That, however, was not the whole difficulty. It was found that the position of shareholding in the company was such that it was not practically possible to get thirteen shareholders personally present at a meeting.

As it is the case that an irregularity of procedure under the Companies Acts can be put right by getting the consent of all the shareholders (*Oxted Motor Co.* [1921] 3 K.B. 32), an attempt was made to do this, but just fell short of complete success. "In these circumstances," said Lord President Clyde, "there is no waiver of the statutory conditions of the incorporated partnership which binds everybody, and that means that there is no waiver at all."

As the decision is authoritative and will form a rule for the guidance of harassed company officials in the future, it may be useful to quote the words used by the Lord President in construing the sub-section: "I think the expression 'impracticable . . . to *conduct* a meeting of the company in the manner prescribed by the articles' is sufficient to cover a case in which it is impracticable owing to the terms of the articles and the state of shareholding in the company to get a quorum present. On the facts which are placed before us in the petition it is impracticable, in the present circumstances, to get a meeting with the appropriate quorum."

The procedure in Scotland is by petition, but according to the English rule it is by way of summons (R.S.C., Ord. LIIIB, r. 8).

Foreclosure Orders in Respect of Registered Land.

A POINT of some difficulty arises as to the form which a foreclosure order should take when it relates to an unregistered charge of registered land. The difficulty arises from an apparent difference between s. 34 (3) and s. 82 (1) (*a*) of the Land Registration Act, 1925, both of which sections deal with orders of court.

Section 82 (1) (*a*) of the Land Registration Act, 1925, provides that "the register may be rectified . . . where a court of competent jurisdiction has decided that any person is entitled to any estate right or interest in or to any registered land or charge and . . . that a rectification of the register is required and makes an order to that effect."

That it was the view of the learned authors of "Brickdale and Stewart-Wallace's Land Registration Act, 1925" (published 1927), that this sub-section was intended to relate (*inter alia*) to foreclosure orders is clear from the statement (at p. 111 of that work): "If the creditor under an unregistered charge takes proceedings for foreclosure he should add an application to rectify the register also. The foreclosure order should end with a direction to the registrar (under s. 82 (1) (*a*)) to make the required entries."

It has, however, been laid down by a "Practice Note" of the Chancery Division, dated 21st December, 1931, that: "Originating summonses asking . . . for foreclosure of registered charges should not ask for rectification of the Land Register . . . The Land Registrar makes the necessary alterations in the Register on production to him of the . . . order absolute pursuant to . . . s. 34 (3) of the Land Registration Act."

Section 34 (3) of the Land Registration Act provides that "an order for foreclosure shall be completed by the registration of the proprietor of the charge (or such other person as may be named in the foreclosure order absolute for that purpose) as the proprietor of the land."

Following the practice laid down by the "Practice Note" of 21st December, 1931, foreclosure orders in respect of *registered* charges do not now contain any direction to the Land Registrar to rectify the register. But it is still a question whether the same practice should be followed in the case of *unregistered* charges of registered land.

The matter was dealt with in a case of *Weymouth* v. *Davis* [1908] 2 Ch. 169, where a foreclosure order had been made in respect of an instrument of charge which had not been registered, a notice of deposit of the land certificate having been registered instead, to save expense. The form of order in this action (which is set out in the report itself) ordered the Registrar of the Land Registry pursuant to s. 95 of the Land Transfer Act, 1875 (which is substantially reproduced in s. 82 (1) (*a*) of the Land Registration Act, 1925) to rectify the register. In a later case *London City & Midland Bank Executor and Trustee Co. Ltd.* v. *Cave* [1925] W.N. 159, the same form of order was followed. In both these cases, therefore, it was accepted that s. 95 of the Land Transfer Act, 1875 (now s. 82 (1) (*a*) of the Land Registration Act, 1925) applied to foreclosure orders.

In view of the uncertainty it would appear to be advisable to add to any originating summons for foreclosure of an unregistered charge or mortgage of registered land a paragraph directing the Registrar of the Land Registry to rectify the register under s. 82 (1) (*a*) by substituting A.B., the person in whose favour the order is asked, for C.D. (the registered proprietor) as the registered proprietor of the land.

The ground for giving the Registrar of the Land Registry a specific direction to make the necessary entries to rectify the register in the case of an unregistered charge of registered land would appear to be that, while a registered charge confers on the owner thereof all the powers conferred by law on the owner of a legal mortgage (s. 34 (1) Land Registration Act, 1925), such powers are not conferred unless and until such charge is completed by registration pursuant to s. 26 (1) of the Act.

Unless, therefore, a foreclosure order absolute (of an unregistered charge) contains a vesting declaration (in which case the Registrar gives effect to it under s. 47 (1) of the Act) it might be held to be inoperative inasmuch as the registration of the charge under which it was made had not been completed under s. 26 (1).

Company Law and Practice.

Refusal of Directors to Register a Transfer of Shares.

MOST articles of association confer on the directors of a company a limited or unlimited power to reject transfers to transferees of whom they do not approve, and the reports furnish us with a number of cases in which intending transferees have had their hopes dashed by the exercise of such a power and have sought to find a remedy at law; and those cases have established principles which are, I think, of considerable interest and practical importance. The power is of a discretionary nature and must be exercised in good faith—not corruptly or fraudulently or arbitrarily, but legitimately for the purpose for which it is conferred; that is to say, in the interest of the company and with due regard to the shareholder's right to transfer his shares, and after a fair consideration of the question at a board meeting.

This general description of the nature of the power is not, perhaps, of great assistance as it stands, so let us see if the authorities provide us with more practical guidance. The first principle to observe is that directors refusing to consent to a transfer are not bound to give their reasons for so doing.

This was established by the Court of Appeal in *Re Gresham Life Assurance Society: Ex parte Penney*, L.R. 8, Ch. 446. There the directors having considered the matter at a board meeting refused to register a transfer and declined to give any reason for objecting to the proposed transferee, and the court held that they were not bound to do so. James, L.J., said: "I cannot conceive that any director would choose to accept office or exercise the power entrusted to him if he were liable to be called upon to say what the particular reasons were or the particular motive was which influenced him in coming to the conclusion that any person was not eligible as a shareholder." Mellish, L.J., said: "It appears to me that it is very important that directors should be able to exercise the power in a perfectly uncontrollable manner for the benefit of the shareholders; but it is impossible that they could fairly and properly exercise it if they were compelled to give the reason why they rejected a particular individual."

That decision was followed in *Re Coalport China Company* [1895] 2 Ch. 404. In *Penney's Case* the power to refuse to register was absolute, whereas in *Re Coalport China Company* the power was limited to particular grounds for refusal; but it was held that the rule that the directors need not disclose their reasons for refusing was equally applicable. A qualification of the rule in such a case was established by the decision of Tomlin, J., in *Duke of Sutherland* v. *British Dominions Land Settlement Corporation Limited* [1926] Ch. 746, where it was held that on an application for interrogatories the company was not entitled to refuse to state which of the *grounds* mentioned in the article authorising rejection the directors had acted under, although it might (in accordance with the rule I have mentioned) refuse to say what reasons influenced them in exercising their discretion upon that ground. There is, of course, a clear distinction between stating which of the grounds specified in the relevant article was the basis of the refusal and giving the reasons for proceeding on that ground; nevertheless, I am not sure that the decision in this last case has not made a bigger inroad on the general rule than has been generally appreciated.

So much for the rule that directors need not furnish reasons for rejecting a transfer. The second principle is this: If directors do not state their reasons it must in the absence of all evidence to the contrary be assumed that they have acted *bonâ fide* and honestly for the furtherance, in their belief, of the interests they were bound to protect. In other words, the absence of stated reasons will not induce the court to presume that the power was improperly exercised; the onus of proving that is on the person impugning the exercise of the power, and until that onus is discharged the inference made by the court is that the directors acted within their jurisdiction and for right reasons: see *Ex parte Penney*, *supra*, and *In re Hannan's King* (*Browning*) *Gold Mining Company Limited*, 14 T.L.R. 314.

The third principle follows from the one I have just enunciated; where no reasons are assigned it is still open to those who seek to have the transfer registered to show affirmatively that the action of the directors was arbitrary and capricious or the power was for any reason not duly exercised. I am not aware of any modern case (except those which I shall mention in a moment where reasons were given for the refusal to register) in which proof of this nature was forthcoming. In *Ex parte Penney*, however, James, L.J., suggested an instance of such a case, viz., if the directors had said to a shareholder: "We will not allow you to transfer your shares unless you give us each a present of £10." "If the directors had been minded, and the court was satisfied that they were minded, whether they expressed it or not, positively to prevent a shareholder from parting with his shares unless upon complying with some condition which they chose to impose, the court could probably . . . interfere to redress the mischief." Again, if it were proved that the directors were determined not to sanction the transfer of any shares, it would, I think, be held to be an improper exercise of the power. It might well be, indeed, that the court would consider there was a *primâ facie* case made out of arbitrary refusal if it were proved that a succession of transferees put forward by one shareholder had all in turn been rejected. The question in all such cases is one of satisfying the court that there is a *primâ facie* case of *mala fides* on the part of the directors, and once that is done the latter can no longer persist in the otherwise perfectly justifiable attitude of refusal to give any reasons.

Finally, we come to the case where in fact reasons are given by the directors for refusing to register a transfer. In these circumstances "the court must consider the reasons assigned with a view to ascertain whether they are legitimate or not; or in other words to ascertain whether the directors have proceeded on a right or a wrong principle. If the reasons assigned are legitimate, the court will not overrule the directors' decision merely because the court itself would not have come to the same conclusion. But if they are not legitimate, as for instance if the directors state that they rejected the transfer because the transferor's object was to increase the voting power in respect of his shares by splitting them among his nominees, the court would hold that the power had not been duly exercised. So also if the reason assigned is that the transferee's name is Smith not Bell," per Chitty, J., in *Re Bell Brothers Limited: Ex parte Hodgson*, 7 T.L.R. 689, at p. 690.

In that case the directors informed the transferee that they refused to approve not only the transferee but any nominee of his, notwithstanding that such nominee might be unobjectionable in all respects except that he was the transferee's nominee. It was held that the directors were not justified in rejecting a transfer on the ground that the transferee, against whom they entertained no objection, was the nominee of some person whom they considered objectionable, and that in so acting they had exercised their power arbitrarily and unjustifiably.

That decision was followed in the case of *Re Bede Steam Shipping Company Limited* [1917] 1 Ch. 123. There the articles gave the directors power to refuse to register transfers of shares if in their opinion it was contrary to the interests of the company that the proposed transferee should be a member. The directors in rejecting a transfer did not simply express their opinion; their reasons also were forthcoming. Eve, J., and the majority of the Court of Appeal held that the power only justified a refusal to register upon grounds personal to the proposed transferee. It did not justify refusal to register transfers of single shares or shares in small numbers because the directors did not think it desirable to increase the number of shareholders, or because they thought the transfer was not *bonâ fide*, the transferee being merely the nominee of the transferor and the transfer made to increase the number of shareholders who would support him in a policy which the directors disapproved. Eve, J., did give instances of cases where refusal would be so justified: e.g., if the transferee would be enabled to acquire and pass on to others information as to the company's business or was a competitor in business with the company, or was a "notoriously litigious" person.

Before leaving this subject (and I have mentioned the main principles applicable, I think, to most cases arising on the point) I ought perhaps to mention that if any of my readers are interested to investigate the matter still further they will find that a very similar question has come before the courts in cases where the committee of the Stock Exchange has refused to re-elect members without assigning reasons: see *Cassel* v. *Inglis* [1916] 2 Ch. 211; *Weinberger* v. *Inglis* [1918] 1 Ch. 517; [1919] A.C. 606.

Mr. William Langstaff Ainslie, solicitor, of Dorking, and Lincoln's Inn, W.C., and formerly of Rowney Bury, near Harlow, Herts, left £31,147, with net personalty £29,123.

A Conveyancer's Diary.

Maintenance—Trustees' Discretion.

I HAVE had my attention called to this subject again, and I think that it may be as well to take the opportunity of dealing with it once more. The position of trustees is not so clear as it might be, although I think that it was the intention of the legislature to make it so.

It sometimes happens that trustees are asked to pay, let us say, the whole income of a fund under their control to the parent or guardian of an infant, and it might seem, at first sight, that they could always do so if the amount is no more than they consider to be reasonably necessary for the maintenance and education of the infant or infants to whom the income belongs, and that they are not bound to take into consideration the fact that the infants have parents living, upon whom the responsibility ought to rest. It is, however, by no means certain that trustees would be justified in every case in doing that.

Section 31 (1) of the T.A., 1925, enacts as follows :—

> (1) Where any property is held by trustees in trust for any person for any interest whatsoever whether vested or contingent then subject to any prior interests or charges affecting that property—
>
> (i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances be reasonable, whether or not there is—
>
> (*a*) any other fund applicable to the same purpose ; or
>
> (*b*) any person bound by law to provide for his maintenance or education.

So far that might seem to be clear enough. But is it ?

Take the case where a parent requests the trustees of a fund to pay the income to him and the trustees are satisfied that the actual cost of the maintenance and education of the infants to whom the income belongs must be at least as much as the income could provide. Then the trustees have to consider whether it would " in all the circumstances be reasonable," for them to do that. It is true that the section gives them what is called a " sole discretion," but it appears that in the exercise of that " sole discretion " they must do what " may in all the circumstances be reasonable." That whilst apparently conferring upon the trustees the widest possible discretion, in fact places upon them a burden which will often be difficult if not intolerable.

Suppose the not unusual case of children who are entitled to an income which would not be more than sufficient to discharge their school or college fees and to maintain them in the position in life in which they are being brought up. And suppose that their parents could, if really pushed to it, although perhaps at some personal sacrifice, so maintain them, would it be " in all the circumstances reasonable " that the whole income should be paid to the parents ? It might be, but I am not prepared to say that it would. If that be so the trustees would be running a risk which they could hardly be expected to undertake in paying the income to the parents.

Again, it might be that the trustees would not know what the parents' income really was, or what other obligations they might have to bear. In such circumstances I do not know how trustees are to decide. In fact they generally will not be able to do so. They will not know the facts or would have to rely upon statements which might or might not be correct.

But the position of trustees is rendered still more difficult by the extraordinary proviso to s. 31.

I must set it out :—

> " Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements, and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes ; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied."

I defy anyone to tell me what that proviso really means and what assistance it gives to trustees.

This is one of the most fatuous provisions to be found in the 1925 legislation, and that is saying a great deal.

Trustees are given a " sole discretion " to pay if they think fit the income which they hold for an infant to the parents or guardians of the infant. They can only do so, however, if " it may in all the circumstances be reasonable." And, in addition to that, they have the proviso imposed upon them that they must have regard " generally to the circumstances of the case." It is manifest that trustees cannot exercise a " sole discretion " in any proper sense without having regard to the " circumstances of the case," and it is equally manifest that no trustees can be properly advised to exercise their " sole discretion " without obtaining the protection of the court. It is an impossible position for trustees (who goodness knows have troubles enough) to be placed in.

I may take the ordinary case where the infant's father (a struggling barrister in Lincoln's Inn perhaps), has, let us say, just enough to maintain for the time being his family who have an income available under a marriage settlement. The trustees say that it is true that they have a " sole discretion " to pay the income to him, but they are reluctant to do so because there is " another fund " (the wretched father's own income) applicable for the same purpose. So the father applies, or the trustees apply, to the court and almost inevitably an order is made and the capital fund is depleted by the costs of it. That happens constantly, and must happen as trustees cannot be expected to take the risk involved in deciding whether " the circumstances of the case " would justify them in paying the income to the father.

The result of the whole matter seems to be that an application to the court is in almost every case desirable if not essential. I should, myself, hesitate very much before advising trustees to exercise their " sole discretion " by paying an infant's income to a parent or guardian, even though, having regard " generally to the circumstances of the case," the trustees might think it proper to do so.

I have only to add that I should find it extremely difficult to explain to a lay client how it is that, although he is given by statute a " sole discretion " he cannot exercise it ! But so it is.

THE ASSIZE SYSTEM.

In opening the Northampton Assizes, Humphreys, J., made reference to the Royal Commission now inquiring into the future of the Assize system. The learned judge, for whose words we are indebted to *The Times*, said : " If the magistrates of this county—and I include in that members of the county council and others interested in the county—have any views as to the desirability of continuing the Assize at Northampton, I would suggest to them that after holding a meeting or meetings they should put their views—as they are fully entitled to do—before that Commission, in order that it may not be said, when that Commission has reported, that no opportunity was given to the county to express its views upon the matter."

Landlord and Tenant Notebook.

Forfeiture of Head Lease Comprising Business Premises.

THE fate of an under-tenant qualified or qualifying for compensation for improvements and/or goodwill under L.T.A., 1927, Pt. I, in the event of the head lease being forfeited depends partly upon the interpretation of L.P.A., 1925, s. 146 (4), and partly upon the effect of ss. 1 (1) and 4 (1) of L.T.A., 1927, itself.

The former, re-enacting s. 4 of the Conveyancing Act, 1892 (enacted soon after the decision, in *Burt* v. *Gray* [1891] 2 Q.B. 98, that s. 14 of the Conveyancing Act, 1881, gave no right of relief to underlessees), provides for vesting orders in favour of sub-tenants and others on forfeiture of a head lease. Terms are a matter of judicial discretion, described by text-book writers as "wide" or even "absolute," and it argues well for the modesty of our judiciary that a judge should complain, as did Joyce, J., in *London Bridge Buildings Co.* v. *Thomson* (1903), 89 L.T. 50, of the failure to prescribe principles and conditions on which such discretion should be exercised. It is right to observe that the section does say "upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the Court may in the circumstances of each case shall think fit"; but it is fair to say, especially in view of the "or otherwise," that this describes rather than defines the position.

Of course, principles soon became the subject-matter of authority, and when it became apparent that under-tenants could, by virtue of this section, claim vesting orders in cases in which the law excluded head tenants from relief (for statutory confirmation, see the Law of Property (Amendment) Act, 1929), it was laid down that on the other hand negligence (an unimportant factor in claims by head tenants) was an all-important consideration. Emphasis was laid on this in *Imray* v. *Oakshette* [1897] 2 Q.B. 218, C.A., and again in *Matthews* v. *Smallwood* [1910] 1 Ch. 777; in the latter case Parker, J., declined to make an order in favour of trustees for debenture-holders who had taken a mortgage of valuable property, by way of sub-demise, without troubling to ascertain whether the lessor's consent was necessary. "The law is not for people who neglect their own interest, but only for people who act with a view to the protection of their own interest." In the former case, Lopes, L.J., went so far as to say that the sub-tenant must be "blameless"; but when considering this dictum in *Hurd* v. *Whaley* [1918] 1 K.B. 448, McCardie, J., drew a distinction between cases in which the mesne tenant might and cases in which he might not be granted relief, and considered that Lopes, L.J.'s condition of "blamelessness" applied only to the latter. The matter before him was one of disrepair, the mesne tenant having broken his covenants and the under-tenant corresponding covenants. McCardie, J.'s judgment provided for relief to the mesne tenant on condition that he repaired, and for an eventual vesting order to the under-tenant on the same conditions.

If all this leaves us in some doubt as to principles, I think there is certainty on one point; in no reported case has an order put the head landlord at any disadvantage. This can be seen from a perusal of *London Bridge Buildings Co.* v. *Thomson*, *supra*, which is a fair illustration of how the law is usually applied. The premises comprised a ground floor (including a shop) and two basements, let for twenty-one years at a rent of £300 for the first three years, £350 for the rest of the term. A few months after the commencement, the tenant sub-let the ground floor shop to C for the rest of the term less three days at a rent of £125. Other parts were also sub-let when, in 1902, the plaintiffs forfeited the lease on the ground of non-payment of rent and issued a writ claiming possession, £226 10s. 4d. the amount in arrear, and mesne profits. Judgment for possession and rent was signed against the tenant, and judgment for possession against all sub-tenants except C, who asked for a vesting order. The plaintiff's demand that in view of the difficulty that they would experience in letting part of the ground floor and one basement, C should be required, as a condition of relief, to take the whole of the premises, or at all events the rest of the floor and one basement, was refused. On the other hand, the learned judge pointed out that a sub-tenant knows, when he takes his underlease, what risks he runs in the matter of forfeiture of the head lease, and C's order for an underlease at the old rent (agreed as reasonable) was made conditional on his paying the rent, etc., due from his ex-landlord till possession, and the costs of his own claim; he was, however, given a right to have any of the judgment recovered from the ex-landlord paid as he directed or assigned to him.

One can visualise circumstances under which a superior landlord might have an order made against him which would not give him such favourable terms. There are head landlords who are very slack about enforcing their rights, and in a case in which arrears of rent of the head lease have been allowed to accumulate, the court might in its discretion apply the dictum of Parker, J., cited earlier in this article, to the benefit of the under-tenant.

How does this discretion affect the position of an under-tenant with vested statutory rights under L.T.A., 1927, Pt. I? Section 8 of the Act provides the machinery for ordinary cases; but what is to be the fate of, e.g., a shop-keeper sub-tenant whose landlord incurs a forfeiture, say three years before term expires, when he (the shopkeeper) has qualified for compensation for goodwill, which involves five years' carrying on of the business by himself or his predecessors in title? He cannot give the requisite notice; the stipulation in s. 4 (1) (as in the case of compensation for improvements under s. 1 (1)) is "in the case of a tenancy determined by notice, within one month after the notice, etc.; in any other case not more than 36 and not less than 12 months before the termination, etc."; the former clearly provides for periodic tenancies, the latter for fixed terms expiring naturally, though possibly if provided with intelligence (of both the objective and the subjective variety) he anticipated the forfeiture and gave notice of intention to claim in time, he might be within the sections. Failing that, will a vesting order (if he can afford it) help him? I think it will. True, it cannot confer a lease exceeding in term that of the sub-lease. And no doubt the objection occurs to one that a vesting order creates a new term; if authority be required, see *Fryer* v. *Ewart* [1902] A.C. 187; it is not like an order relieving a head tenant against forfeiture, which, like artificial respiration, revives what appears to have expired: see *Nance* v. *Naylor* [1928] 1 K.B. 263, C.A. But—and it may please those who are for ever finding fault with Parliamentary draftsmanship to be able for once to praise it—the objection is not sound. For the qualification for compensation for goodwill is (s. 4 (1)) the "carrying on by the tenant or his predecessors in title at the premises of a trade, etc."; in the case of an improvement, that it (s. 1 (1)) "be made by him or his predecessors in title." It would follow, then, that it is immaterial whether during part of the time when the trade was carried on, or at the time when the improvement was made, the claimant occupied as freeholder, tenant, licensee, or even trespasser. And it is, indeed, technically the last-mentioned status that he enjoys from the date of the forfeiture of the head lease till that of his vesting order.

REPORT ON UNEMPLOYMENT FUND.

We learn from an announcement in *The Times* that the Unemployment Insurance Statutory Committee, of which Sir William Beveridge is chairman, has given notice of its intention to make a report to the Minister of Labour on the financial condition of the Unemployment Fund, not later than 28th February of the present year. This is in accordance with the provisions of s. 17, sub-s. (4), of the Unemployment Insurance Act, 1931.

Our County Court Letter.

A DECISION ON DECONTROL.

In a recent case at Stourbridge County Court (*Shaw* v. *Cotton*) the claim was for possession and £5 10s. mesne profits. The plaintiff's case was that she bought the house in December, 1933, and gave notice to quit, but the defendant refused to leave. The previous tenant stated that he had paid 5s. 6½d. a week in rent, and, having himself given notice, he took the keys to the plaintiff's agent, and the house was empty for over two weeks. This was denied by the defendant, who contended that he slept in the house the same night the previous tenant left, having received the key in the office of the agent. The latter had arranged to let him the house, at a rent of 10s., the week before the key was handed over. It was contended for the plaintiff, however, that this arrangement was not made until the previous tenant had handed over the key, and that the house was decontrolled. His Honour Judge Roope Reeve, K.C., gave judgment for the defendant, with costs. Compare *Kearns* v. *Bedford* (1934), 50 T.L.R. 348.

THE RECOVERABILITY OF FOOTBALL POOL PRIZES.

In a recent case at Liverpool County Court (*Tooley* v. *Vernon and Co.*) the claim was for £5 in the following circumstances: the plaintiff had filled in a winning coupon, in which he forecasted correctly eight results in a football pool, in respect of which the defendants had declared a dividend of 104 to 1. The plaintiff was therefore entitled to 104s. less 4s. stakes, but his entry had been declared void, as 4s. from his address was outstanding from the previous year. It transpired that two defaulters had formerly resided at the same address, and that a system of black-listing addresses had been evolved, as football pool promoters were swindled by men having thirty or forty names at one address. His Honour Judge Dowdall, K.C., observed that persons who entered such competitions were bound by the rules, under which addresses (as opposed to the individuals concerned) were blacklisted. Judgment was therefore given for the defendants, who did not ask for costs.

DISTURBANCE OF EASEMENT OF DRAINAGE.

In the recent case of *Maclaren* v. *Herriott*, at Mansfield County Court, the claim was for £25 damages, and an injunction to restrain interference with the outflow of a drain from Teverseal Rectory on to the defendant's field. The plaintiff's case was that his drain passed under a road and on to the field of the defendant, who had blocked the pipe by driving a new gate post through it. The surveyor of the Southwell Diocese had applied for permission to remedy matters, but had been refused access to the defendant's land, and a sanitary notice had been served by the local authority. The defendant's case was that, whatever the position might have been thirty or forty years ago, the drain was now obsolete, and had not discharged on to the field during the six years of the defendant's occupation of his farm. There was a conflict of evidence as to the period over which the drain had been in use, but His Honour Judge Hildyard granted the injunction and gave judgment for the plaintiff for £5 and costs.

THE REMUNERATION OF ESTATE AGENTS.

In *Rand* v. *de Beer*, recently heard at Chelmsford County Court, the claim was for £18 2s. as the balance of a deposit paid by one Edwards on the purchase of the plaintiff's farm. The latter had been sold for £700, and the defendant had received the usual deposit of 10 per cent., viz. £70, but had only paid over £29, i.e., after deducting £25 for commission, £10 for advertising, £5 for car journeys and £1 for telegrams, telephones and postages. The plaintiff admitted the claim to commission, but not the other items, for which no receipts had been produced. The case for the defendant (carrying on business as the Witham Estate Agency) was that the advertisements were prepaid (no receipts being issued) and the car journeys were necessary because the train service was bad. His Honour Judge Hildesley, K.C., gave judgment for the plaintiff, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

DEFENCE OF ADDED PERIL.

In *Maskell* v. *Birmingham Co-operative Society*, at Birmingham County Court, the applicant was a coal loader, and, while going to the respondents' offices on a goods sidings, he was caught between some wagons which were being shunted. Owing to a compound fracture of the right ankle, he had since been totally incapacitated. The respondents contended that the accident did not arise in the course of the employment, but was due to the applicant's own negligence in trying to cross the lines, under the couplings of the trucks, during shunting operations. An L.M.S. shunter stated that, from a distance of eighty or one hundred yards, he saw the applicant bend forward (as if in a hurry) and go between the trucks. After a view, His Honour Judge Ruegg, K.C., held that the shunter could not have seen the applicant, as alleged, as there were trucks intervening. An award was made of 30s. a week, with costs on Scale B. The case was thus governed by *Gane* v. *Norton Hill Colliery Co.* [1909] 2 K.B. 539, and not by *Lancs and Yorks Railway Co.* v. *Highley* [1917] A.C. 352.

In *McEwan* v. *Lyn Hygienic Laundry Ltd.*, at Barnstaple County Court, the applicant (aged seventeen) was a handyman at a laundry, and, while greasing the moving cogs of the calendar, his finger had been caught, and an amputation had been performed at the second joint. The respondents contended that oiling or greasing machinery was no part of the applicant's duty (as the wash-house man was responsible) and the cogs did not require greasing, as they were constant mesh wheels in an oil bath. The medical evidence was that the disability was infinitesimal, and the applicant was fit for full work, as he was an instrumentalist. His Honour Judge Wethered observed that the applicant could not be entitled to more than three weeks' compensation (during his total incapacity) so that the amount involved was £2 16s. 8d. only. The respondents agreed to pay that amount, on the understanding that liability was not admitted, and an award was made accordingly, with costs on Scale A.

REFUSAL TO UNDERGO OPERATION.

The principle of *Tutton* v. *s.s. Majestic* [1909] 2 K.B. 54, was followed in *Taunton Gas Company* v. *Stook*, at Taunton County Court. The application was for a review in the following circumstances: the respondent, while employed as a stoker in 1921, had slipped into a pit, and his right leg was immersed in boiling acid, being scalded from the ankle to the thigh. His average weekly wages had been £4 2s. 6d., and he was paid 35s. a week as compensation. In March, 1930, the leg became worse, and the applicants' medical evidence was that it should be amputated, which would involve no undue risk. The respondent's medical evidence was that the leg was comparatively normal, but his pain was due to a central nervous condition. His condition would not be improved by amputation of the leg, any more than neuralgia could be cured by extracting sound teeth. The applicants contended that the incapacity was due to the unreasonable action of the respondent, and that his compensation should be reduced to £1 a week, as for partial incapacity. His Honour Judge Wethered pointed out that there was no suggestion of amputation, until after fourteen years' treatment. There had been no unreasonable refusal, and the issue was not whether the balance of medical evidence supported amputation. The application was therefore dismissed, with costs.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Survivor of a Legal Joint Tenancy and an Equitable Tenancy in Common now Solely entitled in Equity by Reason of the Intestacy of Her Equitable Co-Tenant —Sale, Mode of.

Q. 3119. (1) In 1931 Mr. and Mrs. X bought a freehold house and the conveyance to them contained a declaration that they should stand possessed thereof on trust for sale, etc., and of the net proceeds of sale in trust for themselves in equal shares as tenants in common. Mr. X has recently died intestate and his whole estate, being under £1,000, passes to Mrs. X. Can Mrs. X sell the house without appointing a new trustee ?

(2) What is the exact meaning of the addition to L.P.A., 1925, s. 36 (2), effected by L.P. (Amend.) A., 1926, Sched. ? Does it apply only to cases where the beneficial interest is held in joint tenancy, and does it exclude cases where it is held in tenancy in common ? The words " solely and beneficially interested " seem ambiguous.

(3) We presume that the opinion expressed in answer to *Q.* 3042 in your issue of the 22nd September, 1934 (78 Sol. J. 657), is based entirely upon the fact that B was solely entitled to the beneficial interest under the trust for sale, and that the opinion would have been the same whatever the provisions of the will might have been ?

A. (1) We certainly think so. She is " the survivor of joint tenants (at law) who is (now) solely and beneficially interested," and thus, in our opinion, within the amendment to s. 36 of L.P.A., 1925, effected by L.P. (Amend.) A., 1926, Sched. Although this amendment is to a section dealing with *beneficial* joint tenancies, it is not in its wording limited to such joint tenancies.

(2) See No. (1), *supra*. The object of the amendment was to resolve a doubt (probably not justified) as to the power of a person who had become solely entitled at law and in equity to effect a sale without recourse to the trust for sale. We suggest that it is immaterial whether such person becomes solely entitled in equity by operation of law or by way of a disposition (such as a will) or by reason of an intestacy.

(3) Yes.

Objection to Clearance Order.

Q. 3120. A client of mine has received a notice from the local authority, who in pursuance of their power under Pt. 1 of the Housing Act, 1930, have made a clearance order relative to (*inter alia*) six cottages which are in mortgage to a client of mine to secure £400, and such order is to be submitted to the Minister of Health for confirmation. The demolition order is for (*inter alia*) the cottages comprised in my client's mortgage and the notice intimates that any objection to the order must be made in writing stating the grounds of any objection and addressed to the Ministry of Health in London before the 6th November, 1934. The mortgagor in this case is very poor and consequently there is no value in the mortgagor's personal covenant, and the probability is that if the clearance order is confirmed by the Ministry of Health my client, the mortgagee, will lose his principal and interest. I shall be glad to have your views as to the nature of the grounds upon which any objection to the order can be made, and whether, in view of the fact that the mortgagee is largely dependent on the interest receivable, an objection on compassionate grounds will be of any value.

A. The order can be opposed on the ground that the density of houses to the acre is not so great as to constitute a slum, that the individual cottages are in good repair, and that the inhabitants are healthy and long-lived. The mortgagor and mortgagee can propound a scheme for the demolition of one cottage, in order to provide more air space for the remainder. This may be rejected on the ground that, although the mortgaged cottages may be fit for habitation, the area as a whole requires clearing. No objection on compassionate grounds will be of any value, as the legislation is confiscatory in effect, and hard cases are of constant occurrence.

Alternative Remedies for Injured Workman.

Q. 3121. We are acting for a workman who was seriously injured while in the course of his employment by a motor car which crashed through some railings surrounding the premises where he worked and pinned him against a wall. He was taken to hospital and has been receiving workmen's compensation for some time now. We are certain that if he commenced an action at common law against the driver of the motor car he would obtain more substantial damages than he is likely to do by the employers' insurance company making a lump sum settlement in lieu of his weekly compensation. Will you please advise : (1) Does the fact that he has accepted workmen's compensation debar him from obtaining damages at common law against the driver of the motor car ? (2) The workman has only recently been informed of his option to claim either at common law or under the Workmen's Compensation Acts. Will the answer to the above question be affected if the workmen repays all moneys he has received under the Workmen's Compensation Acts ?

A. The workman could have taken proceedings concurrently against his employer and the driver, but—having elected in favour of compensation—his right of action is *primâ facie* barred by the Workmen's Compensation Act, 1925, s. 30. In answer to the specific questions : (1) *Primâ facie* the answer is in the affirmative. (2) If, however, the workman repays all the compensation payments, and was unaware of the nature of the receipts (if any) which he signed, he may be able to sue for damages at common law. See *Huckle* v. *London County Council* (1910), 26 T.L.R. 580 ; 4 B.W.C.C. 113.

Sunday Concerts on Licensed Premises.

Q. 3122. A fully-licensed hotel proposed to consent to the holding (by a committee of ladies) of a public concert in the hotel premises on a Sunday evening for the purpose of raising funds for relief in the distressed areas. Would this be in contravention of the Sunday Observance Act, 1780 ? The hotel is situate in an urban district area where Part IV of the Public Health Act (Amendment) Act, 1890, has not been adopted.

A. There would be no contravention of the Sunday Observance Act, 1780, unless there is a charge for admission, or admission is by tickets sold for money. The Sunday Entertainments Act, 1932, s. 3, modifies the Sunday Observance Acts, in places *licensed* to be opened and used on Sundays for, *inter alia*, any musical entertainment. It might be argued that the 1932 Act applies *a fortiori* to places for which no music licence is necessary, but the safer course will apparently be to raise the funds for relief by a collection at the concert.

Fees for Walking Possession.

Q. 3123. X & Co. obtained a High Court judgment against M for £80 and costs, and as it was not satisfied they issued a writ of *fi. fa.* When the sheriff's officer attended at the residence of M to levy execution he was informed that the landlord's bailiff had distrained on the goods for £16 and was shown an inventory of the goods so distrained. Thereupon the sheriff's officer proceeded with his levy and included therein certain goods already included in the landlord's inventory and certain other goods. This was done in the hope that the sale by the landlord would produce some surplus over the landlord's requirements and because otherwise there would not be sufficient effects to satisfy the execution creditor.

(1) Is it correct for the goods distrained on by the landlord to be levied on by the sheriff's officer as well? The sheriff's officer did not leave a man in possession, but the officer has visited the house twice subsequently to see that the goods not included in the landlord's inventory are still there and the officer proposes to charge a fee of 8s. 6d. per day.

(2) Is he entitled to charge this fee seeing that there is not a man continuously in possession?

A. In answer to the specific questions—

(1) Yes, provided the landlord's prior claim to the proceeds is recognised.

(2) This claim should be queried, as one man could be in walking possession at several addresses at the same time, and the collection of fees for each might be open to abuse.

Reserve Fund of Company.

Q. 3124. A company registered under the Companies Act has a reserve fund invested in Stock Exchange securities. At present this fund stands in the directors' names without reference to the company. An enquiry has shown that these companies in question will accept a corporate body as a registered stockholder. The reason for not having the investments in the company's name has been to avoid the necessity of directors' meetings when any of the reserve fund has been sold or other funds bought. Will you kindly inform us whether it is in order for a company's reserve fund to stand in the names of the directors without reference to the company, or whether it is a breach of trust or of any of the provisions in the Companies Acts which would involve the directors in personal liability in the event of the company being wound up for any reason. References would oblige.

A. Secret reserves are not illegal, and there is no objection to their being in the names of directors. The latter would not be guilty of misfeasance—if there is a prompt and full disclosure to the liquidator. There is no reference directly in point.

Accident to Reaper.

Q. 3125. A is a farmer and has in his employ B. B is engaged as a horseman. Whilst harvesting, B was driving the horses attached to a reaping machine belonging to A, and A told him to take B's gun with him (B) on the reaping machine so that B could shoot rabbits on the far side of the field, whilst A would shoot them on the other side. It is the duty of a farmer to keep down rabbits on his farm, and it is usual, during harvest operations, to have guns handy for the purpose of shooting rabbits which, during the work of reaping, are driven into the centre of the crops. B took the gun, which was loaded, but with the hammers down, and placed it on the reaping machine, and proceeded with his work of driving the horses. Whilst B was actually in the act of such driving, the gun from some unknown cause fell off the machine, and, in falling or becoming entangled in the machinery it exploded, and the charge went through B's left fore-arm, which had to be amputated. The result is that he is permanently incapacitated. A's insurance company take the view that the accident did not arise out of B's employment, and the suggestion is that B was sporting. It will be noted that B was, at the time of the accident, actually driving the horses and that he had not the gun in his hand. Reference is made to Workmen's Compensation Act, 1925, s. 1 (2). Will you please advise if the accident arose " out of " B's employment, and state authorities.

A. If A agrees with the version of how the accident happened, it arose " out of " B's employment. The defence of " added peril " would fail, as—even if A disputes telling B to take his gun—the latter was taken in furtherance of the employer's interests. The practice of carrying guns on the machines was doubtless winked at, even if not actually encouraged, by A. The defence that B was sporting appears to be untenable, but there are no relevant authorities, as the question is one of fact. The evidence appears to be all in favour of B, the injured man.

Trees in the Highway.

Q. 3126. A local authority have for many years undertaken the care and maintenance of certain large trees standing in the highway and on footpaths adjacent to private property. Adjacent owners are of opinion that certain of these trees have now become dangerous and should be lopped and topped, or alternatively cut down and removed. It is clear that should the trees in question be blown down, very serious damage to property, and possibly to life and limb, might ensue. The aggrieved frontagers have called upon the local authority to take steps to deal with the position, and have intimated that they will hold them liable for any damage which may ensue. The local authority decline to take action, repudiate the contingent liability and decline furthermore to let the aggrieved parties deal with the situation themselves. Are the local authority entitled to plead the Public Authorities Protection Act, 1893? What steps, if any, can the owners take for the protection of their property, and of the public using the highway?

A. Although the local authority have certain rights of lopping and pruning, under the Public Health Acts, there is probably a doubt as to whether the trees ever became vested in the local authority, as they may be still vested in the frontagers. The Public Authorities Protection Act, 1893, is merely a statute of limitation, requiring proceedings to be taken within six months of the cause of action arising. It appears that not only the property of the frontagers, but also the lives and limbs of the inhabitants at large, are in danger. The facts should therefore be laid before the Attorney-General, with a view to applying for an injunction against the local authority.

Determination of Lease on Demolition.

Q. 3127. Our client is the owner by assignment of a plot of long-term leasehold ground, the houses on which have been demolished under a slum clearance order. She wishes to put an end to the lease. Section 40 of the Housing Act, 1930, provides that the county court judge may make an order determining the lease. Can you tell us what terms are usually imposed on the leaseholder when orders are made under this section? What rights has the lessor against an assignee of the lease?

A. The scope and effect of the Housing Act, 1930, s. 40, is as yet uncertain, in the absence of reported cases thereon. Owing to the infinite variety of circumstances, in which leases may be determined, there are no " usual " terms imposed on the leaseholder. The latter may even be entitled to some payment from the lessor, in consideration of the acceleration of the reversion. The question may also depend upon whether the local authority have paid any compensation for site value. The assignee can seldom be held responsible for the making of the clearance order, as so many property owners are usually involved, and even habitable houses may be condemned. In the result a lessor has no " rights " against an assignee.

To-day and Yesterday.

LEGAL CALENDAR.

4 FEBRUARY.—"And this was the last case that ever Justice Winch spake to in the Court; for he being a man not more admired for his profound learning, then he was reverenced for his pietie and integritie, died upon Friday following being the fourth day of Februarie in the morning as he was making readie to go the Hall." Thus is recorded at the end of the report of the case of *Pleadal* v. *Gosmore* the death of Sir Humphrey Winch in 1625. In the preface to the reports which bear his name, the reader is told to "expect matter here, not eloquence, and the grateful nutriment of the understanding, rather than the pleasing condiments of Rethorick to tickle the Phantasie."

5 FEBRUARY.—Lord Chief Justice Portman died on the 5th February, 1557, less than two years after his elevation from the rank of a puisne judge. His Latin epitaph in the church of St. Dunstan's-in-the-West described his piety towards God, his loyalty towards the Crown and his justice to everyone. Though he had secured royal favour under both Henry VIII and Edward VI, he was in religious matters of the old way of thinking, and under Mary showed himself a zealous Roman Catholic.

6 FEBRUARY. On the 6th February, 1781, Lord George Gordon was acquitted of high treason. The verdict was announced at a quarter past five in the morning, the trial in the King's Bench having lasted since eight o'clock on the previous day. Lord Chief Justice Mansfield and the other judges continued on the Bench during the whole time. The fanatical agitator who had let loose the tempest which had cost the lives of more than three hundred persons owed his acquittal mainly to the eloquence of his junior counsel, Erskine. Several of the insignificant participators in the Gordon Riots were hanged, but their inspirer was set free for further follies.

7 FEBRUARY.—On the 7th February, 1806, Thomas Erskine, the greatest advocate of his time, unwisely accepted the Great Seal.

8 FEBRUARY.—Those who have learnt in childhood "Ye Mariners of England" and "Lord Ullin's Daughter" should be interested in the case of *Campbell* v. *Scott*, 11 Sim. 31, decided by Vice-Chancellor Shadwell on the 8th February, 1842. An enterprising publisher had, without authorisation, included these and other verses by Thomas Campbell in a collection of nineteenth century poetry. He claimed that it would have been an injustice to the poet to leave him out of so representative a work, but the Court of Chancery thought otherwise, and granted an injunction.

9 FEBRUARY.—On the 9th February, 1862, Alexander Milne, a jeweller, was tried at Edinburgh for the murder of James Paterson, a working jeweller whom he frequently employed. About Christmas time, the prisoner had drunk himself into a dangerous state bordering upon insanity. He developed delusions that Paterson had designs upon his life so as to get his wife and his business. Then one day he bought a dagger and when Paterson called on him stabbed him to the heart. He made no attempt at escape. The jury found him guilty and he was sentenced to death.

10 FEBRUARY.—"I was born and passed the first seven years of my life in the Temple. Its church, its halls, its gardens, its fountains, its river, I had almost said—for in those young years, what was this king of rivers to me but a stream that watered our pleasant places?—these are of my earliest recollections . . . What a cheerful liberal look hath that portion of it which from three sides overlooks the greater garden . . . with cheerful Crown Office Row (place of my kindly engendure) right opposite the stately stream." Charles Lamb was born on the 10th February, 1775.

THE WEEK'S PERSONALITY.

Political expediency was responsible for Erskine's elevation to the Chancellorship. The death of Pitt had made it necessary to include some of the whigs in the Grenville administration, and in such circumstances Eldon, who had held the Great Seal for five years, was not considered sufficiently reliable. After Lord Ellenborough, Chief Justice of the King's Bench, and Sir James Mansfield, Chief Justice of the Common Pleas, had declined the burden, Grenville laid Erskine's name before the King, who replied: "What! what! Well! well!—but remember he is your Chancellor, not mine." Indeed, the brilliant qualities which had made him the foremost common law leader of his day were not such as to fit him for the Woolsack. Unwisely he yielded to the temptation to accept the glittering prize. The public was dissatisfied with the appointment and he himself felt his own unfitness so acutely that he called on Romilly to ask him what to read up. "You must make me a Chancellor now," he said, "that I may afterwards make you one." His term of office was short lived and in little more than a year the Great Seal passed from his keeping and returned to his predecessor Eldon. He retired into private life doomed to fifteen years of idleness and comparative obscurity.

IN DEFENCE OF SOLICITORS.

At Westminster County Court recently, a litigant in person, who declared that "one solicitor won't do anything against another solicitor," was told by Judge Tobin that she was "making a wicked and malicious charge against a noble profession." Though her aspersions met with rebuke, she had not made quite such a *faux pas* as a certain defendant who, on a notable occasion at the Glamorgan Assizes, was asked concerning his own solicitors in an earlier transaction: "Were they not a respectable firm of solicitors?" and replied: "Yes, as solicitors go." Mr. Justice Field instantly told him that he was surprised to hear a man of his position and intelligence make such a remark. The witness pleaded that it was a slip of the tongue and the judge said he ought to be careful not to allow his tongue to slip similarly in future, adding: "I have been a solicitor myself." He then indignantly denounced the remark as a gross libel on an honourable profession. Lord Truro, L.C., Lord Russell of Killowen, C.J., and Manisty, J., were among other former solicitors who attained judicial honours.

TOO MANY SOLICITORS?

A recent correspondence in a daily paper raises the question whether there are too many solicitors. What would The Law Society say to the state of things disclosed in the Rolls of Parliament in 1445, when a petition from the Commons of two counties disclosed that the number of attornies there had lately increased from six or eight to fourteen, whereby the peace of those counties was alleged to be greatly interrupted by suits? It was accordingly ordered that there should be no more than six common attornies for Norfolk, six for Suffolk and two for Norwich. Till a comparatively late date, it seems that the number of practitioners was very limited, to judge from the following:—

"One man of law in George the Second's reign
Was all our frugal fathers would maintain.
He too was kept for forms, a man of peace,
To frame a contract or to draw a lease.
He had a clerk with whom he used to write
All the day long, with whom he drank at night.
Spare was his visage, moderate his bill,
And he so kind, men doubted of his skill."

Nowadays, it appears, solicitors are so plentiful that it seems probable that many will prove like that man of law who left no effects because he had no causes.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Searches.

Sir,—My attention has been drawn to a statement made in "A Conveyancer's Diary," Vol. 79, p. 43, in which it is asserted that the practice of allowing a personal search of the register has been abandoned, and, save with one exception, cannot now be made. In view of my advocacy of personal search contained in my book on "Registered Land Conveyancing" (at p. 62) I feel it incumbent upon me to point out that the right to inspect the register, that is to make a personal search, does not depend upon practice, but is a right conferred by the express wording of s. 112 of the Land Registration Act; and, it is submitted, can only be taken away by further legislation. A recent experience of personal search, which undoubtedly can still be made, has fortified my views, expressed in another place, concerning its desirability.

King's College, W.C.2. HAROLD POTTER.

1st February.

Sir,—We have read with interest the article on the above subject which appeared in your issue of 19th January.

There is one point upon which we should like your learned contributor's views.

In referring to official search certificates for local land charges it is stated that the protection afforded by s. 17 of the Land Charges Act, 1925, extends to such certificates.

On one or two occasions when we have applied for official certificates for local land charges the clerk to the council has returned the certificate with a covering letter in which it is stated that the information supplied in the certificate is believed to be correct, but no responsibility is accepted by the council or its officers.

This seems to us to do away with the whole idea of the official certificate, and we should like to know what it is suggested one should do in such circumstances.

Seething-lane, E.C.3. KEENE & CO.

29th January.

Depositions in Criminal Cases.

Sir,—In your issue of last week you refer to the practice, initiated at the Marylebone Police Court, of converting the statements made by witnesses for the prosecution into depositions.

As a justices' clerk of twenty years' standing, I can claim to be fairly conversant with the tedium of taking down longhand depositions, a tedium which is augmented in the many cases in which it is known that the defendant has admitted the charge, or that there is no apparent defence.

I have, however, on many occasions endeavoured to use as depositions the evidence, taken in deposition form, given by witnesses on remand, and have in almost every case found so much variation or addition that a presentable deposition could not be achieved. Without relentless "leading" and a good deal of convenient deafness hardly any witness can be kept to the *ipsissima verba* of his statement.

It must also be borne in mind that the great majority of statements are either those of police officers or are obtained by them in the course of their investigations. Unless it is to be understood that a new set of statements are to be taken by the prosecuting solicitor, one must assume that the existing practice in this respect will hold good. Further, in the country at all events, the great majority of prosecutions for indictable offences are conducted by the police without legal aid.

Police will be police, that is to say, that they are in the main, like the village umpire, "very fair with a strong bias in favour of their own side." Their statements are usually couched in a cumbrous official language of their own and tend to follow stereotyped forms. It is remarkable how often the resolution of their statements into plain English removes an impression, detrimental to the defence, which may not even have been intended. This official jargon is even more in evidence in statements taken by the police. Like Dr. Johnson, they make the smallest fishes talk like whales, and I may perhaps quote an instance given to me by an amused victim. Witness, in collision case: "Well, the next thing I knew was that I felt a bit of a bump." Policeman (writing): "I then felt a terrific impact." And the police have one curious habit of omission. One would suppose that one of the most important parts of a statement would be the recollection of a witness of utterances made by or to the defendant in the course of or immediately after the commission of the alleged offence. Not so the police. Again and again one hears valuable evidence of this kind elicited, both in chief and in cross-examination, of which not a word has appeared on the statement. There would seem to be a theory that what was said before the police arrived is not evidence.

It is not necessary to labour the point; the danger of shortcuts in legal matters is generally recognised, and one which threatens to evade a fundamental principle to the possible prejudice of justice is particularly open to suspicion.

31st January. HOME COUNTIES.

The Law Society's Meeting: Counsel and Briefs.

Sir,—The note under "Current Topics" on this subject in your issue of the 2nd February does not appear to refer to a point emphasised by "Templar" in his letter to *The Times*, viz., the direct interest of their clerks in the fees paid to counsel.

"Templar" advocates the abolition of clerks' fees, and I think such abolition eminently desirable on various grounds, several of which are stated by "Templar."

"The more briefs the more clerks' fees" should apply no longer, and without making any reflection upon the clerks, it seems to me that the abolition of their fees could not fail to have its effect on the complaints now heard as regards the non-attendance of counsel.

4th February. GRAY'S INN.

Probate Costs.

Sir,—In the article on "Probate Costs," in the issue of THE SOLICITORS' JOURNAL dated the 26th inst. (p. 59), it is stated that the "Probate under Seal" fee, the extracting fee, and the clerk's fee are intended to cover the whole of the solicitor's work in (*inter alia*) preparing the warrant for the estate duty and interest.

In "Bills of Costs," by J. E. Thomas (1932 edition), p. 645, a precedent bill contains the item:-

"Preparing Warrant to lead to payment of Estate Duty and copy .. .. .. 5/-"

In "Probate Costs," by F. W. Broadgate (1930 edition), p. 25, a precedent bill contains an identical item; while, in Freeman's "Guide to Probate and Administration Costs" (1903 edition), p. 14, it is stated that a reasonable charge should be added for filling up the summary and warrant, which were not required in 1874 at the date of the Order of the Court of Probate, which regulates the fees.

29th January. SUBSCRIBERS.

[We have submitted our subscribers' letter to the contributor of the article referred to, and the following is his reply: "It is agreed that this and similar items are frequently included in a bill of costs dealing with non-contentious probate work, but they are usually disallowed on taxation. The scale fees are intended to be inclusive."—ED., *Sol. J.*]

Mr. Peter John Skelton, solicitor, of Cheadle, and of Manchester, left estate of the gross value of £26,240, with net personalty £23,316. He left £50 to the Solicitors' Benevolent Association.

Reviews.

Notable British Trials. Trial of Sidney Harry Fox. Edited by F. Tennyson Jesse. 1934. Demy 8vo. pp. xiii and 299. Edinburgh and London: William Hodge & Co., Ltd. 10s. 6d. net.

The portrait of Sidney Fox, whose sordid story closed on the gallows at Maidstone Gaol, is the latest addition to the Rogues Gallery in the Notable British Trials Series. Only the skill and delicacy with which the introduction is written makes bearable reading of the narrative of this parricide, whose mother, after being his partner in a life which was a gigantic sham, became his victim in what he desperately hoped would be his one successful coup. Although this crime is made of such stuff as might revolt even hardened sensation hunters, the serious reader will find here evidence finely analysed, an interesting conflict of medical testimony and a study in criminal psychology handled clearly and well.

The Arbitration Acts, 1889 to 1934, with explanatory Notes. By W. Arthian Davies, M.A., and H. J. Baxter, B.A., of the Inner Temple, Barristers-at-Law. 1934. Demy 8vo. pp. xvi and (with Index) 132. London: Waterlow & Sons, Ltd. 7s. 6d. net.

This book presents in compact and convenient form for those engaged in arbitration proceedings, whether professionally or otherwise, the law relating to commercial arbitration as laid down in the statutes and in the available case-law. It embodies a concise summary of the changes effected by the Act of 1934 which came into force on 1st January, 1935, as well as a carefully annotated review of the "principal" Act of 1889. The Arbitration Clauses (Protocol) Act, 1924, and the Arbitration (Foreign Awards) Act, 1830, both of which deal with matters distinct from the general law as contained in the Acts of 1889 and 1924 and relate to international agreements, form a very useful appendix to a well-written and serviceable volume.

The Life of Lord Carson: Vol. 2. By Ian Colvin. 1934. London: Gollancz, Ltd. 15s. net.

The second volume of Carson's Life inevitably challenges comparison with its predecessor, and the contrast is striking. The first part of the work traced the gradual development of a character and a career, the second is a self-contained epic which is national rather than personal, and in the midst of which the central figure seems to assume the qualities and proportions of one of Carlyle's heroes. The fights in the formalised arena of the Courts, visualised so vividly in the first volume and often brightened by wit and anecdote here gives place to battle in deadly earnest.

"Things now
That bear a weighty and a serious brow,
Sad, high and working, full of state and woe,"

are here presented and the pen that takes up the tale well depicts the mazes of political intrigue at Westminster, the disciplined energy of desperate and rebellious loyalty in Ulster and, towering above both, a tremendous figure guiding and controlling—Carson.

Books Received.

Every Man's Own Lawyer. By a Barrister. Sixty-third Edition. 1935. Demy 8vo. pp. xvi and (with Index) 921. London: The Technical Press, Ltd. 15s. net.

Private Companies: Their Management and Statutory Obligations. By Herbert W. Jordan, Company Registration Agent, and Stanley Borrie, Solicitor. Third Edition. 1935. Demy 8vo. pp. xii and (with Index) 205. London: Jordan & Sons, Ltd. 5s. net.

Index to the Statutory Rules and Orders in Force in Northern Ireland on 31st August, 1930. First Edition, 1934. Royal 8vo. pp. viii and (with Index) 354. Belfast: H.M. Stationery Office. £1 1s. net.

An Epitome of Snell's Principles of Equity. By H. Gibson Rivington, M.A. (Oxon), and Clifford W. Rivington, B.A. (Oxon), of the Middle Temple, Barrister-at-Law. 1935. Demy 8vo. pp. xii and 267. London: Sweet and Maxwell, Ltd. 9s. net.

Famous Trials. By The First Earl of Birkenhead, P.C., G.C.S.I., D.L., Lord Chancellor of England 1919–1922. Demy 8vo. pp. 567. London: Hutchinson & Co (Publishers), Ltd. 3s. 6d. net.

Jane and the Law. By Erskine John. 1935. F'cap. 8vo. pp. 227. London: Frederick Muller, Ltd. 5s. net.

The Bench, The Bar and The Bear-Garden from the Well of the Court. By "Veritas." 1935. Crown 8vo. pp. 76. London: Sir Isaac Pitman & Sons, Ltd. 2s. net.

Trial of William Gardiner (The Peasenhall Case). Edited by William Henderson. 1935. Demy 8vo. pp. xi and 332. London and Edinburgh: William Hodge & Co., Ltd. 10s. 6d. net.

[All books acknowledged or reviewed can be obtained through the Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Notes of Cases.

Court of Appeal.

Harman *v.* Layton-Bennett.

Lord Hanworth, M.R., Romer and Maugham, L.JJ.
31st January, 1935.

Bankruptcy — Adjudication — Order Discharged — Scheme—Application by Debtor—Order Discharged—Leave to Appeal Refused—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), ss. 96 and 108.

Appeal from a decision of Bennett, J. (78 Sol. J. 820).

The plaintiff, having been adjudicated bankrupt, the Court of Appeal discharged the order and directed a scheme, which he subsequently applied to have varied. The application was refused and the adjudication order restored. Leave to appeal was refused, and the House of Lords subsequently dismissed an appeal as incompetent. To raise the matter afresh, the plaintiff now asked for a declaration that the order restoring the adjudication order was null and void. Bennett, J., held that he had no jurisdiction.

Lord Hanworth, M.R., dismissing the appeal, said that in rescinding their earlier order, the Court of Appeal had acted under s. 108 of the Bankruptcy Act, 1914. It had been argued that that provision did not apply to the Court of Appeal, because of s. 96. This was not so. Bennett, J., had said that the only remedy for a person aggrieved by an order was to appeal, and that if there was no appeal from a court's decision, there was no remedy. This judgment was correct. The view taken by the Court of Appeal in rescinding the earlier order was supported by *In re A Debtor: Ex parte Debtor* (No. 1088 of 1923) [1924] B. & C.R. 1.

Romer and Maugham, L.JJ., agreed.

Counsel: *F. de Verteuil; L. Cohen*, K.C., and *A. M. Stevenson.*

Solicitors: *Richard Brooks & Son; Gilbert Samuel & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Rex *v.* **Licensing Authority for West Midland Traffic Area: *Ex parte* Great Western Railway Co.**

Greer, Slesser and Roche, L.JJ.
30th and 31st January, 1935.

Street Traffic—Furniture Removers—Application for "B" Licence—Area of Normal Use—Grant without Conditions—Objection—Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5, c. 53).

Appeal from the King's Bench Division.

Hill & Long Limited applied in the statutory form for a "B" licence under the Road Traffic Act, 1933, stating that the district in or places between which their vehicles would normally be used were Birmingham, Wolverhampton, Sutton and Hagley, and that their business was furniture removing. They did not state the district or area in which they proposed to use the vehicles and they were not bound to do so. This application was published in the official list of applications, this being the statutory manner of giving notice to persons who might be entitled to object to the grant of the licence. The licensing authority granted the licence, without any restriction as to distance. The railway company said that had they known the area was to be so extended, they would have objected, and the Divisional Court quashed the licence.

Greer, L.J., allowing the appeal, said that an application for a "B" licence could never be an application for a licence to run in any particular district. The district mentioned was not that to which the licence was confined, but that in which it was normally intended to use the vehicles. There was no warrant in the Act for confining the application to a certain area. The notice should have conveyed to the railway company that the application might be granted without conditions. It was the only notice provided for by the Act.

Slesser and Roche, L.JJ., agreed.

Counsel: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *W. H. Lewis; Monckton*, K.C., *Morrison*, K.C., and *Pereira*.

Solicitors: *Treasury Solicitor; A. G. Hubbard.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Simeon *v.* **Minister of Health.**

Branson, J. 24th January, 1935.

Local Government—Land—Compulsory Purchase Order—Appeal—Order *intra vires* the Statute—Description of Property to be Acquired—Consideration of Objections by Minister—Public Works Facilities Act, 1930 (20 & 21 Geo. 5, c. 50).

By his appeal under the Public Works Facilities Act, 1930, Sir John W. B. Simeon sought to have a compulsory purchase order made by the Rural District Council of the Isle of Wight on the 17th April, 1934, for the purchase of certain lands at Calbourne, set aside. The Order was confirmed by the Minister of Health on the 11th August, 1934. On the 14th July, 1932, Sir John Simeon had conveyed the land to which the order related to Mr. Percy Strickland as sub-purchaser, but subject to the following reservations: (1) the right to deal with percolating water, and (2) the benefit of certain agreements between Sir John Simeon and the Isle of Wight Rural District Council under which the Council had the right to take water on payment of royalties to Sir John Simeon. The compulsory purchase order was made in respect of what was described in the schedule to the order as "approximately 15½ acres pasture land," and in the column "Owners or reputed owners" were the names of Mr. Percy Strickland and Sir John Simeon. The grounds on which it was sought to set the order aside were first, that it was *ultra vires* the Act in that it had authorised the purchase of something—the reserved water rights—from the appellant which was not land: secondly, it was said that the requirements of the Act had not been complied with in that (i) the property proposed to be acquired was not sufficiently described in the order, and (ii) the objection of the appellant to the order had not been sufficiently considered by the Minister of Health.

Branson, J., said that with regard to the order being *ultra vires* the Act, the whole argument depended on the assumption that the insertion of Sir John Simeon's name in the column "owners or reputed owners" meant that the order was authorising the acquisition of something from him. He (his Lordship) did not think that that assumption was justified. What it did say was that if Sir John Simeon had an interest in land then that interest might be bought, but if he had got some kind of an interest which was not land within the meaning of that word in the Act, then the fact that his name appeared in the column effected nothing against him. The order was not, therefore, *ultra vires* the Statute. Secondly, as to the description of the property to be acquired, unless one was to assume that the notice was intended to refer to something other than what it said, no complaint could be made of the description at all. Further, the words in the Act that "a notice in the prescribed form stating the effect of the order" should be served, meant only that the notice was to give an indication of what the order contained, and not, as was contended for the appellant, that the notice should bring home to the person receiving it what effect was going to be produced upon him or his property if the order was carried through. Lastly, on the question whether the Minister had sufficiently considered the appellant's objection, it seemed to him (his Lordship) that the language used in the Act indicated an intention on the part of the Legislature to confer the right upon the Minister, having held the public inquiry, to deal with the report which came from the holder of the inquiry and to give his own consideration to objections which were not withdrawn, and nothing more. For those reasons the appeal would be dismissed, with costs.

Counsel: *Sir Gerald Hurst*, K.C., and *L. W. Byrne* for the appellant; *The Solicitor-General* (Sir Donald Somervell, K.C.), *W. Bowstead* and *R. C. Essenhigh*, for the Respondent.

Solicitors: *Emmet & Co*, for *Gunner, Wilson & Jerome*, Newport, I.W.; *The Solicitor*, Ministry of Health.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Southern Railway Company *v.* **Boots Pure Drug Company Limited.**

MacKinnon, J. 31st January, 1935.

Carriage by Rail — Dangerous Goods — Indemnity Third Party.

In this action the Southern Railway Co. claimed £203 16s. 3d. from Boots Pure Drug Co., Ltd., under an indemnity contained in a consignment note for the carriage of dangerous goods. The plaintiffs' claim was for damages sustained through a fire in one of their trucks on the 12th October, 1934, which they alleged was caused by the breaking of a carboy of nitric acid consigned by Boots Pure Drug Co., Ltd., from Brighton to Beeston, Notts. They alleged that the glass of the carboy was too thin and was unfit to stand the strain of railway travel. The contents of the truck were destroyed and the plaintiff company had to meet claims amounting to £186. The damage to the truck was assessed at £17 11s. 1d. The carboy had been supplied to the defendants, Boots Pure Drug Co., Ltd., by James Wilkinson & Son, Ltd., and the defendants claimed to be indemnified by James Wilkinson & Son, who were joined as third parties. The plaintiffs said that the carboy was contained in an iron hamper with straw packing between the glass and the iron, and the iron hamper was in turn enclosed in a wooden crate. It was alleged that the glass broke and that the acid set fire to the straw. The defendants contended that the carboy was as fit for transport as reasonable care and skill could make it. They did not admit that the

glass was so thin as not to comply with the regulations. James Wilkinson & Son, Ltd., said that they were not told that the carboy was to be carried by rail.

MACKINNON, J., after hearing evidence, said that he had come to the conclusion that the glass was too thin. He added that he was sorry for the third parties who were unable to say from which supplier they had received the carboy. It was their misfortune. There would be judgment for the plaintiffs against the defendants, with costs, for £203 16s. 3d. and judgment for the defendants for the same amount against the third parties, with costs, and also for the costs they (the defendants) had to pay to the plaintiffs.

COUNSEL: *Henn Collins*, K.C., and *A. T. Denning* for the plaintiffs; *N. Birkett*, K.C., and *J. Wylie* for the defendants; *Willoughby Jardine*, K.C., and *J. Neal* for the third party.

SOLICITORS: *W. Bishop; Seaton Taylor & Co; Corbin, Greener & Cook* for *Arthur Neal, Scorah & Co.*, Sheffield.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Parliamentary News.

Progress of Bills.

House of Lords.

Baildon Urban District Council Bill.
Read First Time. [30th January.

Birmingham Corporation Bill.
Read First Time. [30th January.

Bootle Extension Bill.
Read First Time. [30th January.

Bristol Tramways Bill.
Read First Time. [30th January.

Bury and District Joint Water Board Bill.
Read First Time. [30th January.

Chichester Corporation Bill.
Read First Time. [30th January.

City of London (St. Paul's Cathedral Preservation) Bill.
Read First Time. [30th January.

Electricity Supply Bill.
Read Second Time. [31st January.

Exeter Corporation Bill.
Read First Time. [30th January.

Folkestone and District Electricity Bill.
Read First Time. [30th January.

Frimley and Farnborough District Water Bill.
Read First Time. [30th January.

Gelligaer Urban District Council Bill.
Read First Time. [30th January.

Gloucester Corporation Bill.
Read First Time. [30th January.

Golders Green (Jewish) Burial Ground Bill.
Read First Time. [30th January.

Halifax Extension Bill.
Read First Time. [30th January.

Hertfordshire County Council Bill.
Read First Time. [30th January.

Hoylake Urban District Council Bill.
Read First Time. [30th January.

Marlow Water Bill.
Read First Time. [30th January.

Newcastle-upon-Tyne Corporation (Quay Extension) Bill.
Read First Time. [30th January.

Norwich Electric Tramways Bill.
Read First Time. [30th January.

Nottingham Corporation Bill.
Read First Time. [30th January.

Poole Road Transport Bill.
Read First Time. [30th January.

Port of London Bill.
Read First Time. [30th January.

St. Bartholomew's Hospital Bill.
Read First Time. [30th January.

Severn Navigation Bill.
Read First Time. [30th January.

Severn Navigation (Charging Powers) Bill.
Read First Time. [30th January.

Sharpness Docks and Gloucester and Birmingham Navigation Bill.
Read First Time. [30th January.

South Metropolitan Gas Bill.
Read First Time. [30th January.

South Suburban Gas Bill.
Read First Time. [30th January.

Stoke-on-Trent Corporation Bill.
Read First Time. [30th January.

Stourbridge Navigation Bill.
Read First Time. [30th January.

Supreme Court of Judicature (Amendment) Bill.
Commons Amendment agreed to. [6th February.

Swansea and District Transport Bill.
Read First Time. [30th January.

Urmston Urban District Council Bill.
Read First Time. [30th January.

Unemployment Insurance Bill.
Read First Time. [30th January.

West Riding of Yorkshire Mental Hospitals Board (Superannuation) Bill.
Read First Time. [30th January.

West Sussex County Council (Water) Bill.
Read First Time. [30th January.

Weymouth and Melcombe Regis Corporation Bill.
Read First Time. [30th January.

House of Commons.

Ascot District Gas and Electricity Bill.
Read Second Time. [4th February.

Beckenham Urban District Council Bill.
Read Second Time. [4th February.

Bognor Gas and Electricity Bill.
Read Second Time. [4th February.

British Shipping (Assistance) Bill.
Read Third Time. [1st February.

Burnley Extension Bill.
Read Second Time. [4th February.

Chester Water Bill.
Read Second Time. [4th February.

Clacton-on-Sea Pier Bill.
Read Second Time. [4th February.

Coventry Canal Navigation Bill.
Read Second Time. [4th February.

Croydon Corporation Bill.
Read Second Time. [4th February.

Derwent Valley Water Board Bill.
Read Second Time. [4th February.

Easington Rural District Council Bill.
Read Second Time. [4th February.

Edinburgh Corporation (Tramways, etc.) Order Confirmation Bill.
Read Third Time. [4th February.

Fylde Water Board Bill.
Read Second Time. [4th February.

Glamorganshire Canal Company Bill.
Read Second Time. [4th February.

Great Western Railway Bill.
Read Second Time. [4th February.

Herring Industry Bill.
Read Second Time. [4th February.

Housing Bill.
Read Second Time. [31st January.

London and North Eastern Railway Bill.
Read Second Time. [4th February.

London County Council (General Powers) Bill.
Read Second Time. [4th February.

Maidstone Corporation Bill.
Read Second Time. [4th February.

Medway Lower Navigation Bill.
Read Second Time. [4th February.

Metropolitan Police (Borrowing Powers) Bill.
Read Second Time. [4th February.
Ministry of Health Provisional Order (Huntingdonshire Joint Hospital District) Bill.
Read First Time. [5th February.
Ministry of Health Provisional Order (South Chilterns Joint Small-Pox Hospital District) Bill.
Read First Time. [5th February.
Newcastle and Gateshead Waterworks Bill.
Read Second Time. [4th February.
Newcastle-upon-Tyne Corporation (General Powers) Bill.
Read Second Time. [4th February.
Oxford Canal Bill.
Read Second Time. [4th February.
Rochdale Canal Bill.
Read Second Time. [4th February.
Saltburn and Marske-by-the-Sea Urban District Council Bill.
Read Second Time. [4th February.
Sheffield and South Yorkshire Navigation Bill.
Read Second Time. [4th February.
South Essex Waterworks Bill.
Read Second Time. [4th February.
Sunbury-on-Thames Urban District Council Bill.
Read Second Time. [4th February.
Supreme Court of Judicature (Amendment) Bill.
Read Third Time. [5th February.
Weaver Navigation Bill.
Read Second Time. [4th February.
West Hampshire Water Bill.
Read Second Time. [4th February.

Questions to Ministers.

REPAIRING LEASEHOLDS.

Mr. DORAN asked the Attorney-General whether he will consider an inquiry into the question of repairing leaseholds whereby speculative purchasers thereof use their powers for the expulsion of the old tenant in order to instal a nominee of their own.

THE SOLICITOR-GENERAL: Under the existing law the courts have power to prevent any oppressive use of the exercise of the right of forfeiture. If, however, my hon. Friend has any information as to cases of hardship of the kind suggested and will furnish me with particulars, they will be considered. [31st January.

COUNTY COURT JURISDICTION.

Major MILNER asked the Attorney-General, what representations have been received by the Lord Chancellor, or other appropriate authority, within the past three years advocating an extension of the jurisdiction of county courts.

THE ATTORNEY-GENERAL: During the past three years the Lord Chancellor has received the following representations advocating an extension of the jurisdiction of the county courts:—

(1) The Council of County Court Judges recommended that the jurisdiction should be increased to £200, with power to increase further from time to time by Order in Council up to £500. They also advocated jurisdiction in libel and slander.

(2) The Associated Provincial Law Societies resolved in favour of an increase of the jurisdiction to £300.

(3) The Business of Courts Committee, although it reported against an extension of the jurisdiction in actions commenced in the County Court, recommended that the High Court should have power to remit actions to the County Court up to £200. [1st February.

LAND REGISTRY OFFICE.

Sir NICHOLAS GRATTAN-DOYLE asked the Attorney-General whether, in view of the proved usefulness of the Land Registry Office, he will consider extending its operations over an increased number of English Counties.

THE ATTORNEY-GENERAL (Sir Thomas Inskip): It is proposed by my noble and learned Friend, the Lord Chancellor, to prepare an Order under Section 122 of the Act extending to the county of Middlesex. Only one such Order to come into effect before January, 1937, can be prepared by my noble and learned Friend except at the instance of a county council. [6th February.

CORONERS' INQUESTS (COMMITTEE OF INQUIRY).

Mr. LECKIE asked the Home Secretary whether he will include in the terms of reference to the committee he proposes to set up to consider the question of coroners' duties the desirability of limiting their powers to determining the cause of death, as is already the case in the inquiries in Scotland, and not to attempt to allocate responsibility.

Sir J. GILMOUR: The committee's terms of reference have not yet been finally determined, but I have no doubt that they will be sufficiently wide to admit of consideration being given to the scope of coroners' inquiries. [6th February.

Rules and Orders.

THE POOR LAW ACT, 1934 (DATE OF OPERATION) ORDER, 1935, DATED JANUARY 31, 1935, MADE BY THE MINISTER OF HEALTH UNDER SECTION 2 (4) OF THE POOR LAW ACT, 1934 (24 & 25 GEO. 5, c. 59).

80913.

The Minister of Health, in exercise of his powers under the Poor Law Act, 1934, and of all other powers enabling him in that behalf, hereby makes the following Order.

1. The Act so far as it relates to wounds or disability pensions and to the Transitional Payments (Determination of Need) Act, 1932,* shall come into operation on the first day of March, 1935.

2. This order may be cited as the Poor Law Act, 1934 (Date of Operation) Order, 1935.

Given under the official seal of the Minister of Health this thirty-first day of January, nineteen hundred and thirty-five.

(L.S.) *R. H. H. Keenlyside,*
Assistant Secretary,
Ministry of Health.

* 22 & 23 Geo. 5. c. 54.

Societies.

United Law Society.

A meeting of the United Law Society was held on the 28th January in the Middle Temple Common Room. Mr. T. A. Holford proposed: "That this House disapproves of international military and police forces." Mr. C. H. Moseley opposed. Messrs. J. H. Vine Hall, O. T. Hill, R. Isdell-Carpenter, R. W. Bell, H. S. Wood Smith, W. Vaughan Williams, H. Everett and R. E. Ball spoke and Mr. Holford replied. The motion was lost by two votes.

A meeting of the United Law Society was held on the 4th February in Middle Temple Common Room. Mr. H. S. Palmer proposed: "That *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, was wrongly decided." Mr. N. G. C. Pearson opposed. Miss C. Colwill and Mr. J. H. Menzies spoke, and Mr. Palmer replied. The motion was lost by six votes.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 29th January (Chairman, Mr. L. J. Frost), the subject for debate was "That the case of the *Arpad* [1934] P. 189, was wrongly decided." Mr. J. A. Dowding opened in the affirmative; Mr. P. H. North Lewis opened in the negative; Mr. D. J. N. Anderson seconded in the affirmative; Mr. R. Morgan seconded in the negative. The following members also spoke: Messrs. G. Mark Parbury, D. B. Rubie, J. E. Terry, J. Roberts and S. Campbell. The opener having replied, and the Chairman having summed up, the motion was carried by one vote. There were thirteen members and three visitors present.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 5th February (Chairman, Mr. R. J. A. Temple), the subject for debate was "That a boy's best friend is his mother." Miss U. A. Hastie opened in the affirmative. Mr. P. W. Iliff opened in the negative. The following members also spoke: Miss H. M. Cross, Messrs. B. T. Collings, R. Jackling, R. Langley Mitchell, T. R. E. Ennion, Quentin Hurst, B. W. Main, S. Campbell, K. Wyndham-Kaye and A. Morgan. The opener having replied, the motion was lost by three votes. There were seventeen members and two visitors present.

The Hardwicke Society.

A meeting of the Society was held on Friday, 1st February, at 8.15 p.m., in the Middle Temple Common Room, the President (Mr. A. Newman Hall) in the chair. Mr. L. Ungoed Thomas (ex-President) moved: "That this House

approves of Mr. Lloyd George's proposals." Mr. A. A. Baden Fuller opposed. There also spoke: Mr. Thorne, Mr. T. H. Mayers, Mr. Menzies, Mr. A. C. Douglas, Mr. McKinnon, Mr. Llewellyn Thomas, Mr. L. J. Solly, Mr. Ifor Lloyd (ex-President), and Mr. Burrell. The hon. mover having replied, the house divided, and the motion was carried by five votes.

The Union Society of London.

(CENTENARY YEAR.)

A meeting of the society was held at the Middle Temple Common Room, on Wednesday, the 6th February, at 8.15 p.m., Mr. A. D. Russell-Clarke (joint honorary secretary) being in the chair. Mr. Fedrick proposed the motion: "That Anglo-American co-operation is essential to the maintenance of world peace." Mr. J. G. Baker opposed, and Messrs. Dobson, Hurle Hobbs, Russell-Clarke, Clark, Newton, Symmons, Capt. Ellershaw, Mr. Fraser and Mr. Sandilands also spoke. Mr. Fedrick replied. Upon division the motion was carried by two votes.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that the honour of Knighthood be conferred upon The Hon. Mr. Justice BUCKNILL, O.B.E., in virtue of his appointment as a Judge of the High Court of Justice, Probate, Divorce and Admiralty Division.

The King has been pleased to approve, on the recommendation of the Lord Chancellor, the names of the following gentlemen for appointment to the rank of King's Counsel: Mr. PAUL ERNEST SANDLANDS, O.B.E., Mr. RALPH SUTTON, Mr. JACQUES ABADY, Mr. ST. JOHN HUTCHINSON, Mr. JOHN HENRY THORPE, O.B.E., Mr. CUTHBERT SNOWBALL REWCASTLE, Mr. WINTRINGHAM NORTON STABLE, Mr. GODFREY RUSSELL VICK, Mr. ARTHUR MALCOLM TRUSTRAM EVE, M.C., Mr. KENNETH SYDNEY CARPMAEL, Mr. FREDERIC AKED SELLERS, Mr. DAVID DAVIES, Mr. HENRY URMSTON WILLINK, M.C., Mr. CHARLES EUSTACE HARMAN, Mr. JOHN WILLIAM MORRIS, M.C., and Mr. CYRIL JOHN REDCLIFFE.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. ARTHUR S. WARD be appointed Recorder of Newark-on-Trent, to succeed Mr. R. A. WILLES, who has been appointed Recorder of Coventry. Mr. Arthur Samuel Ward was called to the Bar by Lincoln's Inn in 1906.

Mr. WILLIAM CLEVELAND CLEVELAND-STEVENS, K.C., has been elected a Bencher of the Honourable Society of Lincoln's Inn.

Mr. Justice BAXTER has been appointed Chief Justice of New Brunswick in succession to Sir Douglas Hazen. He was formerly Premier of the Province.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Feb. 11	Hicks Beach	Ritchie	More	*Andrews
,, 12	Andrews	Blaker	Ritchie	*More
,, 13	Jones	More	Andrews	*Ritchie
,, 14	Ritchie	Hicks Beach	More	*Andrews
,, 15	Blaker	Andrews	Ritchie	More
,, 16	More	Jones	Andrews	Ritchie

DATE.	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	GROUP II. MR. JUSTICE CLAUSON. Witness. Part II.	MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 11	Ritchie	*Hicks Beach	*Blaker	Jones
,, 12	*Andrews	Blaker	*Jones	Hicks Beach
,, 13	More	*Jones	*Hicks Beach	Blaker
,, 14	*Ritchie	Hicks Beach	Blaker	Jones
,, 15	Andrews	*Blaker	*Jones	Hicks Beach
,, 16	More	Jones	Hicks Beach	Blaker

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 21st February, 1935.

	Div. Months.	Middle Price 6 Feb. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	117¼	3 8 3	2 18 5
Consols 2½%	JAJO	92	2 14 4	—
War Loan 3½% 1952 or after	JD	108¼	3 4 8	2 18 1
Funding 4% Loan 1960-90	MN	120½	3 6 5	2 16 11
Funding 3% Loan 1959-69	AO	105¾	2 16 8	2 13 9
Victory 4% Loan Av. life 29 years	MS	118¼	3 7 8	3 0 10
Conversion 5% Loan 1944-64	MN	123¼	4 1 2	2 2 4
Conversion 4½% Loan 1940-44	JJ	113¼	3 19 6	2 2 3
Conversion 3½% Loan 1961 or after	AO	111¼	3 2 11	2 17 8
Conversion 3% Loan 1948-53	MS	105¾	2 16 8	2 9 7
Conversion 2½% Loan 1944-49	AO	103½	2 8 4	2 1 3
Local Loans 3% Stock 1912 or after	JAJO	97¼	3 1 8	—
Bank Stock	AO	376½	3 3 9	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	93½	2 18 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	99	3 0 7	—
India 4½% 1950-55	MN	116	3 17 7	3 2 11
India 3½% 1931 or after	JAJO	99	3 10 8	—
India 3% 1948 or after	JAJO	91	3 5 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	122	3 13 9	3 5 3
Sudan 4% 1974 Red. in part after 1950	MN	117	3 8 5	2 13 6
Tanganyika 4% Guaranteed 1951-71	FA	116	3 9 0	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	113	3 19 8	2 9 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 4 10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	105	3 11 5	3 6 1
Canada 4% 1953-58	MS	112xd	3 11 5	3 3 0
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 9
Nigeria 4% 1963	AO	116	3 9 0	3 3 0
*Queensland 3½% 1950-70	JJ	103	3 8 0	3 4 10
South Africa 3½% 1953-73	JD	109	3 4 3	2 17 0
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	101	2 19 5	2 15 3
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 8
Leeds 3% 1927 or after	JJ	98	3 1 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	109	3 4 3	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	90xd	2 15 7	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96½xd	3 2 2	—
Manchester 3% 1941 or after	FA	98	3 1 3	—
*Metropolitan Consd. 2½% 1920-49	MJSD	101xd	2 9 6	—
Metropolitan Water Board 3% "A" 1963-2003	AO	101	2 19 5	2 18 11
* Do. do. 3% "B" 1934-2003	MS	100xd	3 0 0	3 0 0
Do. do. 3% "E" 1953-73	JJ	103	2 18 3	2 15 8
Middlesex County Council 4% 1952-72	MN	116	3 9 0	2 17 0
† Do. do. 4½% 1950-70	MN	118	3 16 3	3 1 3
Nottingham 3% Irredeemable	MN	99	3 0 7	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 2
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	116½	3 8 8	—
Gt. Western Rly. 4½% Debenture	JJ	128½	3 10 0	—
Gt. Western Rly. 5% Debenture	JJ	139½	3 11 8	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	134	3 14 8	—
Gt. Western Rly. 5% Preference	MA	119	4 4 0	—
Southern Rly. 4% Debenture	JJ	115½	3 9 3	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	114	3 10 2	3 4 4
Southern Rly. 5% Guaranteed	MA	133½	3 14 11	—
Southern Rly. 5% Preference	MA	119½	4 3 8	—

*Not available to Trustees over par. † Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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